



THE

SPIRIT

OF

LAW S.



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TO

R. W. A. J.

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SPIRIT^c
OF
LAW S.

Translated from the FRENCH of
Charles Louis
M. DE SECONDAT,
BARON DE MONTESQUIEU.

A NEW TRANSLATION.
IN THREE VOLUMES.
VOL. I

..... PROLEM SINE MATRE CREATAM.
OVID.

THE FIFTH EDITION,
Carefully revised and improved with considerable
Additions by the Author.

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PRINTED FOR H. LATHAM

M.DCC.LXXV



T H E
L I F E O F T H E A U T H O R,
W I T H
An Account of his Writings.

Extracted from the ELOGIUMS on M. de MON-
TESQUIEU, published by M. de MAUPERTUIS
and M. d'ALEMBERT.

 MONTESQUIEU was born in the year 1689, in the Chateau de la Brede, within three leagues of Bourdeaux, of an ancient and noble family. He applied himself, almost from his infancy, to the study of civil law. The first product of his early genius was a work, in which he undertook to prove, that the idolatry of most of the Pagans did not deserve eternal punishment. But this book his prudence thought fit to suppress. In 1714 he was made counsellor of the parliament of Bourdeaux; and in 1716 president à mortier. In this year he was also created a member of the new-founded acade-

my of the same city. In 1725 he opened the parliament with a speech, the depth and eloquence of which were convincing proofs of his great abilities as an orator. The year following he quitted his charge; which, in so excellent a magistrate, would have been inexcusable, if, in ceasing to execute the law, he had not put it in his power to render the law itself more perfect.

IN 1728 he offered himself a candidate for a seat in the *Academie François*; to which his *Lettres Persannes* (published in 1721) seemed to give him a sufficient title: yet some, rather too bold, strokes in that work, together with the great circumspection of that society, rendered the matter dubious. Cardinal Fleury, alarmed with what he had heard concerning these letters, wrote, to let the academy know, that the king would not have them admit the author, unless he thought proper to disavow the book. M. MONTESQUIEU declared that he had never owned himself to be the author of it: but that he should never disavow it. The cardinal read the *Lettres Persannes*, found them more agreeable than dangerous, and MONTESQUIEU was admitted.

WHEN he left France, he accompanied his intimate friend, Lord Waldgrave, in his embassy to Vienna; and, after seeing also Hungary, Italy, Switzerland, and Holland, he ended his tour in Great Britain; where, meditating upon the spring of that government, in which, says M. Maupertuis, so many seemingly incongruous advantages are united, he found all the materials that were wanting to complete the great works which lay wrapt in his imagination.

No sooner was he returned to France, than he retired to La Brede: where for the space of two whole years, seeing nothing but books and trees, he wrote his *Considerations on the causes of the grandeur and decline of the Roman empire*, which was published in 1733. To this work he designed to have added a book on the English government; but this most excellent treatise has since found a more proper place in his *Esprit des Loix*, with which he obliged the world in the year 1748. The preceding works of M. MONTESQUIEU may be regarded as so many steps leading up to this great temple which he erected to the felicity of mankind. From the first page to the last of this book, the nature of M. MONTESQUIEU's soul is distinctly visible; his great love of mankind, his desire for their happiness, and his sentiments of liberty. His picture of Asiatic despotism, of that horrid government where one sees but one lord, and all the rest in slavery, is one of the best preservatives from such an evil. The same wisdom appears in his advice how to guard against the evils that may arise from too extensive an equality.

THE *Dialogue between Sylla and Eucrates*, *Lysimaque* and the *Temple de Gnyde*, were also written by M. MONTESQUIEU; and though of a different kind, do not less indicate their author, than his more profound compositions. They prove to us that wisdom is no enemy to mirth.

THE same candour which distinguished M. MONTESQUIEU in his writings, was also his characteristic in his conversation with the world. He was the same man, viewed in all lights. He ap-

pears even, if possible, more extraordinary, when we consider him as a member of society, than as an author. Profound, sublime, in his simplicity, he charmed, instructed, and never offended. I myself, says M. Maupertuis, having had the happiness to frequent those societies of which he was a member, have been frequent witness of the impatience with which he was always expected, and the universal joy that appeared on his arrival. The modesty and openness of his mien bore great resemblance to his conversation. He was well proportioned; and though he had almost entirely lost the sight of one eye, yet that defect was scarcely observable.

He was extremely negligent of his dress, despising every thing that went beyond being decent. His cloaths were always of the plainest kind, without any ornament of gold or silver. The same simplicity reigned at his table, and in every other part of his oeconomy. His paternal estate he left as he found it, neither increased nor diminished. On the 10th of February 1755, he died, as he had lived, without either ostentation or pusillanimity, acquitting himself of every duty with the greatest decency. During his indisposition his house was incessantly crouded with people of the first distinction in France, and such as were most deserving of his friendship. The Duchefs d'Aiguillon, who will permit me to mention her name upon this occasion, (M. MONTESQUIEU's memory would lose too much were I not to name her), scarce ever left him a moment; she received his last sighs. It was in her house that I first saw him, and there began the friendship that hath afforded me so much delight. To

this lady I am also indebted for the circumstances of his death. The sweetness of his disposition, she tells me, continued to his very last moment. Not a single complaint escaped his lips, nor even the least sign of impatience. These were his words to those that stood around him: *I always paid great respect to religion: The morality of the gospel is a most excellent thing, and the most valuable present that could possibly have been received by man from his Creator.* The Jesuits, who were near him, pressing him to deliver up his corrections of the *Lettres Persannes*, "he gave to me," adds the Duchess, "and to Madame du Pré, his manuscript, with these words.—*I will sacrifice every thing to reason and religion; consult with my friends, and decide whether this ought to appear.*" He had a pleasure in the presence of his friends, and, as often as an interval of ease would permit, he would join the conversation. *His situation, he told me, was cruel, but not without many causes of consolation:* so sensible was he of the public concern, and the affection of his friends. Myself and Madame du Pré were his attendants almost day and night. The Duke de Nivernois, M. de Buckley, the family of Fitzjames, the Chevalier de Jeaucourt, &c. In short, the house was always full, and even the street was scarce passable. But all our care and anxiety was as ineffectual as the skill of his physicians. He died the thirteenth day of his illness, of an inflammatory fever, which had seized every part of him."

M. MONTESQUIEU was married in 1715, to Jeanne de Lartigue, daughter to Pierre de Lar-

tigue, Lieutenant Colonel of the regiment de Maulevrier. By this lady he had a son and two daughters. His son M. de Secondat, distinguished for his physical and mathematical knowledge, was named to fill his father's place in the academy of Berlin, of which the father had been admitted a member in 1746.



T H E

AUTHOR'S Advertisement.

1°. **T**O make the first four books of this work be better understood, it is to be observed that what I distinguish by the name of *virtue*, in a republic, is the love of one's country, that is, the love of equality. It is not a moral, nor a christian, but a political *virtue*; and it is the spring which sets the republican government in motion, as honour is the spring which gives motion to monarchy. Hence it is that I have distinguished the love of one's country, and of equality, by the appellation of political virtue. My ideas are new, and therefore I have been obliged to find out new words, or to give new acceptations to old terms, in order to convey my meaning. They who are unacquainted with this particular, have made me say most strange absurdities, such as would be shocking in any part of the world, because in all countries and governments morality is requisite.

2°. THE reader is likewise to take notice, that there is a great difference between saying, that a certain quality, modification of the mind, or virtue, is not the spring by which government is actuated, and affirming that it is not to be found in that government. Were I to say, such a wheel, or such a pinion; is not the spring which sets the watch a going, can you infer from thence that they

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are not to be found in the watch? So far is it from being true, that the moral and christian virtues are excluded from monarchy, that even political virtue is not excluded. In short, honour is found in a republic, though its spring be political virtue; and political virtue is found in a monarchical government, though it be actuated by honour.

To conclude, the honest man of whom we treat in the third book, chap. v. is not the christian, but the political honest man, who is possessed of the political virtue there mentioned. He is the man who loves the laws of his country, and who is actuated by the love of those laws. In this edition I have set these matters in a clearer light, by giving a more precise meaning to my expression: and in most places, where I have made use of the word *virtue*, I have taken care to add the term *political*.





T H E

AUTHOR'S PREFACE.

IF there is any thing amidst the prodigious number of subjects contained in this book, which, contrary to my expectation, may possibly offend, I can at least assure the public, that it was not inserted with an ill intention: for I am not naturally of a captious temper. Plato thanked the Gods, that he was born in the same age with Socrates: and for my part I give thanks to the Almighty, that I was born a subject of that government under which I live; and that it is his pleasure I should obey those whom he has made me love.

I BEG one favour of my readers, which I am afraid will not be granted me; this is, that they will not judge by a few hours reading, of the labour of twenty years; that they will approve or condemn the book entire, and not a few particular phrases. If they would search into the design of the author, they can do it no other way so completely, as by searching into the design of the work.

IN the first place I have considered mankind; and the result of my thoughts has been, that amidst such a prodigious diversity of laws and manners, they were not solely conducted by the caprice of fancy.

I HAVE laid down the first principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only con-

sequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent.

WHEN I have been obliged to look back into antiquity, I have endeavoured to assume the spirit of the ancients, lest I should consider those things as alike, which are really different; and lest I should miss the difference of those which appear to be alike.

I HAVE not drawn my principles from my prejudices, but from the nature of things.

HERE a great many truths will not appear, till we have seen the chain which connects them with others. The more we enter into particulars, the more we shall perceive the certainty of the principles on which they are founded. I have not even given all these particulars, for who could mention them all without a most insupportable fatigue?

THE reader will not here meet with any of those bold flights, which seem to characterise the works of the present age. When things are examined with never so small a degree of extent, the fallies of imagination must disappear; these generally arise from the mind's collecting all its powers to view only one side of the subject, while it leaves the other unobserved.

I WRITE not to censure any thing established in any country whatsoever. Every nation will here find the reasons on which its maxims are founded; and this will be the natural inference, that to propose alterations, belongs only to those who are so happy as to be born with a genius capable of penetrating into the entire constitution of a state.

IT is not a matter of indifference, that the minds of the people be enlightened. The prejudices of magistrates have arisen from national prejudice. In

a time of ignorance they have committed even the greatest evils without the least scruple; but in an enlightened age they even tremble, while conferring the greatest blessings. They perceive the ancient abuses; they see how they must be reformed; but they are likewise sensible of the abuses of a reformation. They let the evil continue, if they fear a worse; they are satisfied with a lesser good, if they doubt of a greater. They examine into the parts, to judge of them in connection; and they examine all the causes to discover their different effects.

COULD I but succeed so as to afford new reasons to every man to love his sovereign, his country, his laws; new reasons to render him more sensible in every nation and government of the blessings he enjoys, I should think myself the happiest of men.

COULD I but succeed so as to persuade those who command, to increase their knowledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from obedience; I should think myself the most happy of mortals.

I SHOULD think myself the happiest of men, could I contribute to make mankind recover from their prejudices. By prejudices, I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

IT is in endeavouring to instruct mankind, that we are best able to practise that general virtue, which comprehends the love of all. Man, that flexible being, conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his

view; and of losing the very sense of it, when this idea is banished from his mind.

I HAVE often begun, and as often have I laid aside this undertaking. I have several times given the leaves I have written to the * winds: I every day felt my paternal hands fall †. I have followed my object without any fixed plan: I have known neither rules nor exceptions; I have found the truth, only to lose it again. But when I had once discovered my first-principles, every thing I sought for appeared; and in the course of twenty years, I have seen my work begun, growing up, advancing to maturity, and completed.

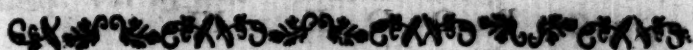
Is this work meets with success, I shall owe it chiefly to the grandeur and majesty of the subject. However, I do not think that I have been totally deficient in point of genius. When I have seen what so many great men both in France, England, and Germany, have said before me, I have been lost in admiration; but I have not lost my courage: I have said with Corregio, *And I likewise am a § painter.*

* *Ludibria ventis.*

† *Ter patria cecidere manus*—

§ *Ed io anche son pittore.*





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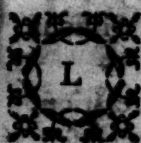


THE
SPIRIT
OF
LAWS.

BOOK I.
Of Laws in General.

CHAP. I.

Of the Relation which Laws have to different Beings.

AWS, in their most extensive sense, are the necessary relations arising from the nature of things. In this sense all beings have their laws, the Deity his laws, the material world its laws, the intelligences superior to man their laws, man his laws, the beasts their laws.

* Law is the queen of mortal and immortal beings, says Plutarch, in his discourse to an unlearned prince.

THEY who have said that a *blind fatality* produced the various effects we behold in this world speak very absurdly; for can any thing be more unreasonable than to pretend that a blind fatality could produce intelligent beings?

THERE is then a primitive reason; and laws are the relations subsisting between it and different beings, and the relations of these to each other.

GOD is related to the world as maker and preserver; the laws by which he made all things, are those by which he preserves them. He acts according to these rules, because he knows them; he knows them, because he created them; and he created them, because they are relative to his wisdom and power.

As we observe that the universe, though formed by the motion of matter, and void of understanding, subsists through so long a series of ages, its motions must undoubtedly be directed by invariable laws: and could we imagine another world, it must also have constant rules, or else it would inevitably perish.

THUS the creation, which appears to be an arbitrary act, supposeth laws as invariable as those of the fatality of the Atheists. It would be foolish to say, that the Creator might govern the world without those laws, since it could not subsist without them.

THESE laws are a fixt and invariable relation. In bodies moved, the motion is received, increased, diminished, lost, according to the relations of the quantity of matter and velocity; each diversity is *uniformity*, each change is *constancy*.

PARTICULAR intelligent beings may have laws which they have made themselves, but they have

some also which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying, that before the describing of a circle all the radii were not equal.

WE must therefore acknowledge relations of justice antecedent to the positive law by which they are established: as for example, that if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to shew their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependance; if one intelligent being injures another, it deserves a retaliation; and so forth.

BUT the intelligent world is not near so well governed as the physical. For though the former has also its laws, which of their own nature are invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and they even frequently infringe those which they have made themselves.

WHETHER brutes be governed by the general laws of motion, or by a particular movement, we know not. Be that as it may, they have not a more intimate relation to God than the rest of the mate-

rial world; and sensation is of no other use to them, than in the relation they have either to other particular beings, or to themselves.

By the allurements of pleasure they preserve the individual; and by the same allurements they preserve their species. They have natural laws, because they are connected by sensation; positive laws they have none, because they are not united by knowledge. And yet they do not invariably conform to their natural laws; these are better observed by vegetables, that are void of both understanding and sense.

BRUTES have not the high advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it; even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions.

MAN, as a physical being, is like other bodies, governed by invariable laws. As an intelligent being, he continually violates the laws established by God, and changes those of his own instituting. Though left to his own private direction, he is, nevertheless, a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loseth; and as a sensible creature, he is subject to numberless impetuous passions. Such a being might every instant forget his Maker; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow creatures; legislators have therefore confined him to his duty by laws as well political as civil.

CHAP. II.

Of the Laws of Nature.

THE laws of nature, so called, because they derive their force wholly from our frame and existence, are antecedent to the above-mentioned laws. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society: the laws received in such a state would be those of nature.

THE law which imprints on our minds the idea of a Creator, and inclines us towards him, is the first in importance, though not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had acquired any knowledge. It is very evident that his first ideas would not be of a speculative nature; he would think of the preservation of his being, before he would enquire into its origin. Such a man would feel nothing in himself at first but impotency and weakness; his timidity and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in woods *, trembling at the motion of a leaf, and flying from every shadow.

In this condition every man, instead of being sensible of his equality, would imagine himself inferior. There would therefore be no danger of their attacking one another; the first law of nature would be peace.

THE natural desire which Hobbes attributes to

* For instance, the savage found in the woods of Hanover, who was taken over to England in the reign of George I.

men of subduing one another, is very badly founded. The idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.

HOBBS enquires, *Why men go armed, and have locks and keys to fasten their doors, if they be not naturally in a state of war?* But is it not plain that he attributes to mankind before the establishment of society, what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defence?

MAN would find a sense of wants next to that of his weakness. Hence another law of nature would prompt him to seek for nourishment.

FEAR, I have observed, would induce men to shun one another; but the marks of this fear being reciprocal, would soon engage them to associate. Besides, this association would soon follow from the very pleasure one animal feels at the approach of another of the same species. Again, the attraction arising from the difference of sexes would augment this pleasure, and the natural inclination they have for each other, would make a third law.

BESIDE the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge; and thence arises a second tye, which brutes have not. Men have therefore a new motive of uniting; and the desire of living in society makes a fourth law of nature.

C H A P. III.

Of positive Laws.

NO sooner do mankind enter into a state of society, than they lose a sense of their weakness; equality ceases, and then the state of war commences.

EACH particular society begins to feel its strength, whence arises a state of war betwixt different nations. The individuals likewise of each society become sensible of their strength; hence the principal advantages of this society they endeavour to turn to their own emolument, which constitutes a state of war betwixt them.

THESE two different kinds of states give rise to human laws. Considered as inhabitants of so great a planet, which necessarily contains a vast number of nations, they have laws relative to their mutual intercourse, which is what is called by us the *law of nations*. As members of a society that must be properly supported, they have laws relative to the governors and the governed; and this we call *politic law*. They have also another kind of laws, as they stand in relation to each other; which is the *civil law*.

THE law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good in their power, and in time of war as little injury as possible, without hurting their real interests.

VICTORY is the object of war; that of victory is conquest; and that of conquest preservation.

From this and the preceding principle all those rules are derived which form the *law of nations*.

ALL countries have a law of nations, even the Iroquois themselves, though they eat their prisoners: for they send and receive ambassadors, and understand the rights of war and peace. The misfortune is, that their law of nations is not founded on true principles.

BESIDES the law of nations relating to all societies, there is a polity or civil constitution for each particularly considered. No society can subsist without a form of government. *The united strength of individuals*, as Gravina very justly observes, *constitutes what we call the body politic*.

THE general power may be in the hands of a single person, or of many. Some imagine that nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves nothing. For if the power of a father be relative to a single government, that of brothers after the decease of a father, and that of cousin-germans after the death of brothers, refer to a government of many. The political power necessarily comprehends the union of many families.

It is better to say, that the government most conformable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established.

THE strength of individuals cannot be united without a conjunction of all their wills. *The conjunction of those wills*, as Gravina again well observes, *is what we call the CIVIL STATE*.

LAW in general is human reason, inasmuch as it governs all the nations of the universe; the poli-

tical and civil laws of each nation ought to be only the particular cases in which human reason is applied.

THEY ought to be adapted in such a manner to the people for whom they are made, that it is a great chance if those of one nation suit another.

THEY ought to be relative to the nature and principle of each government: whether they form it, as may be said of politic laws; or whether they support it, as in the case of civil institutions.

THEY ought to be relative to the climate of each country, to the quality of its soil, to its situation and extent, to the chief occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have a relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In short, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all which different views they should be considered.

THIS is what I have undertaken to do in the following work. I shall examine all these together, since they constitute what I call the SPIRIT OF LAWS.

I HAVE not separated the political from the civil institutions: for as I do not pretend to treat of laws, but of their spirit; and as this spirit consists in the different objects, it is not so much my business to follow the natural order of laws, as that of these relations and objects.

I SHALL first enquire into the relations which laws have to the nature and principle of each go-

vernment; and as this principle has a great influence on laws, I shall make it my study to understand it thoroughly; and if I can but once establish it, the laws will soon be seen to flow from thence as from their source. I shall pass afterwards to other relations which are more particular.



B O O K I I.

Of Laws directly derived from the Nature of Government.

C H A P. I.

Of the Nature of the three different Governments.

THERE are three different kinds of government; *republican, monarchical, and despotic.* To discover their nature, it is sufficient to recollect the common notion, which supposes three definitions, or rather three facts: that a *republican government is that in which the body, or only a part of the people, is possessed of the sovereign power: monarchy, that in which a single person governs by fixed and established laws: a despotic government, that in which a single person directs every thing according to his own will and caprice.*

I CALL this the nature of each government; we must now enquire into those laws which directly conform to this nature, and which consequently are the fundamental laws.

C H A P. II.

Of the republican Government, and the laws relative to Democracy.

WHEN the body of the people in a republic is possessed of the supreme power, this

is called a *democracy*. When the sovereign power is lodged in the hands of a part of the people, it is then an *aristocracy*.

IN a democracy the people are in some respects the sovereign, and in others the subject.

THERE can be no exercise of sovereignty but by their suffrages, which are their own will; now the sovereign's will is the sovereign himself. The laws therefore which establish the right of suffrage are fundamental to this government. And indeed it is as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and in what manner he should govern.

LIBANIUS * says, that at *Athens* a stranger, who intermeddled in the assemblies of the people, was punished with death. This is because such a man usurped the rights of sovereignty.

IT is a material point to fix the number of citizens who are to form the public assemblies; otherwise it would be uncertain whether the whole, or only a part of the people, had given their votes. At *Lacedæmon* the number was fixed to ten thousand. But *Rome*, designed by providence to rise from the weakest beginnings to the highest pitch of grandeur; *Rome*, doomed to experience all the fickle changes of fortune; *Rome*, who had sometimes all her citizens without her walls, and sometimes all Italy, and a considerable part of the world within them: *Rome*, I say, never fixed the number †; and this was one of the principal causes of her destruction.

* Declam. 17 and 18.

† See the considerations upon the causes of the grandeur of the Romans, and their decline, chap. IX.

THE people, in whom the sovereign power resides, ought to have the management of every thing within their reach; what exceeds their abilities must be transacted by their ministers.

THE ministers cannot properly be said to be theirs, without they have the power of nominating them: it is therefore a fundamental maxim in this government, that the people should chuse their ministers, that is, their magistrates.

THEY, as well as sovereigns, and even more so, have occasion to be directed by a council or senate. But to have a proper confidence in these, they should have the chusing of the members; whether the election be made by themselves, as at Athens; or by some magistrate appointed for that purpose, as was customary at Rome on certain occasions.

THE people are very well qualified for chusing those whom they are to intrust with part of their authority. They have only to be determined by things which they cannot be ignorant of, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are therefore very capable of electing a general. They know when a judge is assiduous in his office, gives universal satisfaction, and has never been charged with bribery: this is sufficient for chusing a prætor. They are struck with the magnificence or riches of a fellow citizen; no more is requisite for electing an edile. These are facts of which they can have better information in a public market-place, than a sovereign in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this is beyond the reach of their abilities.

SHOULD we doubt of the people's natural capacity, in respect to the discernment of merit, we need only cast an eye on the continual succession of astonishing elections made by the Athenians and Romans; which no one surely will attribute to chance.

WE know, that though the people of Rome assumed to themselves the right of raising plebeians to public offices, yet they never would exert this power; and though at Athens the magistrates were allowed, by the law of Aristides, to be elected from all the different classes of the inhabitants, there never was a case, says Xenophon *, that the common people petitioned for employments which could endanger either their security or their glory.

As most citizens have sufficient abilities to chuse; though unqualified to be chosen; so the people, though capable of calling others to an account for their administration, are incapable of conducting it themselves.

THE public business must be carried on with a certain motion, neither too quick nor too slow. But the people have always too much or too little motion. Sometimes with a hundred thousand arms they overturn all before them; and sometimes with a hundred thousand feet they creep like insects.

IN a popular state the people are divided into certain classes. It is in the manner of making this division that great legislators have signalized themselves; and it is on this the duration and prosperity of democracy have always depended.

SERVIVS Tullius followed the spirit of aristocracy in the distribution of his classes. We find

* Page 691 and 692. Wechel. edit. ann. 1596.

in Livy *, and in Dionysius Hallicarnassensius †, in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into a hundred and ninety-three centuries, which formed six classes; and ranking the rich, who were in smaller numbers, in the first centuries, and those in middling circumstances, who were more numerous, in the next, he threw the indigent multitude into the last; and as each century had but one vote, ¶ it was property rather than numbers which decided the elections.

SOLON divided the people of Athens into four classes. In this he was directed by the spirit of democracy, his intention not being to fix those who were to chuse, but such as were eligible: therefore leaving to every citizen the right of election, he made § the judges eligible from each of those four classes; but he commanded the magistrates to be chosen only out of the first three, consisting of people of easy fortunes.

As the division of those who have a right of suffrage is a fundamental law in republics; the manner also of giving this suffrage is another fundamental law.

THE suffrage by *lot* is natural to democracy; as that by *choice* is to aristocracy.

THE suffrage by *lot* is a method of electing that offends no one; but animates each citizen with the agreeable hope of serving his country.

* Book 1. † Book 24. art. 15 and seq.

¶ See in the Considerations on the causes of the grandeur of the Romans, and their decline, chap. 9. how this spirit of Servius Tullius was preserved in the republic.

§ Dionysius Hallicarn. eulogium of Isocrates, page 67, tome 2. Wechel edit. Pollux, liv. 8, chap. 10. art. 130.

BUT as this method is in itself defective, it has been the endeavour of the most eminent legislators to regulate and correct it.

SOLON made a law at Athens, that military employments should be conferred by choice; but that senators and judges should be elected by lot.

THE same legislator ordained, that civil magistracies, attended with great expence, should be given by choice; and the others by lot.

IN order however to amend the suffrage by lot, he made a rule, that none should be elected but those who presented themselves; that the person elected should be examined by judges * and that every one should have a right to accuse him if he were unworthy of the office †: this participated at the same time of the suffrage by lot, and of that by choice. When the time of their magistracy was finished, they were obliged to submit to another judgment concerning their conduct. Persons utterly unqualified, must have been very backward in giving in their names to be drawn by lot.

THE law which fixes the manner of giving suffrage is also fundamental in a democracy. It is an important question, whether the suffrages ought to be public or secret. Cicero remarks §, that the laws ¶ which rendered them secret towards the close

* See the oration of Demosthenes *de falsa legat.* and the oration against Timarchus.

† They used even to draw two tickets for each place, one which gave the place, and the other which named the person who was to succeed, in case the first was rejected.

§ Lib. 1. and 3. de leg.

¶ They were called *Leges Tabulares*; two tablets were presented to each citizen, the first marked with an *A* for *Antiquo*, or *I forbid it*; and the other with an *U* and an *R*, for *Uti Rogas*, or *Be it as you desire*.

of the republic, were the cause of its decline. But as this is differently practised in different republics, I shall offer here what I think concerning this subject.

THE people's suffrages ought undoubtedly to be public; * and this should be considered as a fundamental law of democracy. The lower class ought to be directed by those of superior rank, and restrained within bounds by the gravity of eminent personages. Hence, by rendering the suffrages secret in the Roman republic, all was ruined; it was no longer possible to direct a populace that sought its own destruction. But when the body of the nobles are to vote in an aristocracy †; or in a democracy, the senate ‡; as the business is then only to prevent intrigues, the suffrages cannot be too secret.

In a senate intriguing is dangerous; as it is also in a body of nobles; but not so in the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on the account of an actor, as ever they could be for the welfare of the state. The misfortune of a republic is, when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this case public affairs grow indifferent to them, and avarice becomes their predominant passion. Unconcerned about the government, and every thing belonging to it, they peaceably wait for their hire.

It is also a fundamental law in democracies, that

* At Athens, the people used to lift up their hands.

† As at Venice.

‡ The thirty tyrants at Athens commanded the suffrages of the Areopagites to be public, in order to manage them as they chused. *Lysias orat. contra Agorast. cap. 9.*

the people should have the whole power to enact laws. And yet there are several occasions on which it is necessary the senate should have a power of decreeing; nay it is often proper to make some trial of law before it is established. The constitutions of Rome and Athens were excellent. The decrees of the senate * had the force of laws for the space of a year; but did not become perpetual till they were ratified by the people's consent.

CHAP. III.

Of the Laws relative to the Nature of Aristocracy.

THE sovereign power is lodged in the hands of a certain number of persons in aristocracy. These are invested both with the legislative and executive authority; and the rest of the people are, in respect to them, the same as the subjects of a monarchy in respect to the sovereign.

THEY do not vote here by lot, for this would be productive of inconveniencies only. And indeed, in a government where the most mortifying distinctions are already established, though they were to be chosen by lot, still they would not cease to be odious; it is the nobleman they envy, and not the magistrate.

WHEN the nobility are numerous, there must be a senate to regulate the affairs which the body of the nobles are incapable of deciding, and to prepare others for their decision. In this case it may be said, that the aristocracy is in some measure in

* See Dionys. Halicarn. lib. 4, and 9.

the senate, the democracy in the body of the nobles, and the people are nothing at all.

IT would be a very happy thing in an aristocracy, if the people, in some measure, could be raised from their state of annihilation. Thus at Genoa the bank of St. George being administered by the people§, gives them a certain influence in the government, from whence their whole prosperity is derived.

THE senators ought by no means to have a right of naming their own members; for this would be the only way to perpetuate abuses. At Rome, which in its infancy was a sort of aristocracy, the senate did not fill up the vacant places in their own body; the new members were appointed by the * censors.

IN a republic, the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy. In the latter the laws have provided for, or in some measure adapted themselves to, the constitution; and the principle of government checks the sovereign: but in a republic, where a private citizen has obtained an exorbitant power †, the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.

THERE is an exception to this rule, when the constitution is such as to have immediate need of a magistrate invested with supreme power. Such was Rome with her dictators, such is Venice with her state inquisitors; these are formidable magistrates,

§ See Mr Addison's Travels to Italy.

* They were nominated at first by the consuls.

† This is what ruined the republic of Rome. See considerations on the causes of the grandeur of the Romans, and their decline.

who restore, as it were, by violence, the state to its liberty. But what is the reason that these magistracies are so very different in these two republics? It is because Rome maintained the remains of her aristocracy against the citizens; whereas Venice employs her state inquisitors to support her aristocracy against the nobles. The consequence was, that at Rome the dictatorship could be only of a short continuance, as the people act through passion and not with design. It was necessary that such a magistracy as this should be exercised with lustre and pomp, the business being to intimidate, and not to punish the multitude. It was also proper that the dictator should be created only for some particular affair, and for this only should have an unlimited authority, as he was always created upon some sudden emergency. On the contrary, they have occasion for a permanent magistracy at Venice; for here it is that schemes may be set on foot, continued, suspended, and resumed; that the ambition of a single person becomes that of a family, and the ambition of one family that of several. They have occasion for a secret magistracy, the crimes they punish being hatched in secrecy and silence. This magistracy must have a general inquisition, for their business is not to remedy known disorders, but to prevent the unknown. In short, the latter is designed to punish suspected crimes; whereas the former used rather menaces than punishment even for crimes that were openly avowed.

In all magistracies, the greatness of the power must be compensated by the brevity of the duration. This most legislators have fixed to a year; a longer time would be dangerous, and a shorter would be contrary to the nature of government.

For who is it that in the management even of his domestic affairs would be thus confined? At Ragusa* the chief magistrate of the republic is changed monthly, the other officers every week, and the governor of the castle every day. But this can take place only in a small republic surrounded † by formidable powers, who might easily corrupt such petty and insignificant magistrates.

THE best aristocracy is that in which those who have no share in the legislature are so few and inconsiderable, that the governing party have no interest in oppressing them. Thus when Antipater § made a law at Athens, that whosoever was not worth two thousand drachms, should be excluded from the right of suffrage, he formed by this method the best aristocracy possible; because this was so small a sum, as excluded very few, and not one of any rank or consideration in the city.

ARISTOCRATICAL families ought therefore, as much as possible, to level themselves in appearance with the people. The more an aristocracy borders on democracy, the nearer it approaches to perfection: and, in proportion as it draws towards monarchy, the more it is imperfect.

BUT the most defective of all is that in which the part of the people that obeys is in a state of civil slavery to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.

* Tournesfort's voyages.

† Diodorus, lib. 18. p. 601. Rhodoman's Edition.

§ At Lucca the magistrates are chosen only for two months.

CHAP. IV.

Of the Relation of Laws to the Nature of monarchical Government.

THE intermediate, subordinate and dependent powers, constitute the nature of monarchical government; I mean of that in which a single person governs by fundamental laws. I said, the *intermediate, subordinate and dependent powers*. And indeed, in monarchies the prince is the source of all political and civil power. These fundamental laws necessarily suppose the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and consequently there is no fundamental law.

THE most natural, intermediate and subordinate power is that of the nobility. This in some manner seems to be essential to a monarchy, whose fundamental maxim is, *no monarch, no nobility; no nobility, no monarch*; but there may be a despotic prince.

THERE are men who have endeavoured in some countries in Europe to abolish the jurisdiction of the nobility; not perceiving that they were driving at the very thing that was done by the parliament of England. Abolish the privileges of the lords, the clergy, and cities in a monarchy, and you will soon have a popular state, or else a despotic government.

THE courts of a large kingdom in Europe have, for several centuries, been striking at the patrimonial jurisdiction of the lords and clergy. We do

not pretend to censure these sage magistrates; but we leave it to the public to judge, how far this may change the constitution.

FAR am I from being prejudiced in favour of the privileges of the clergy; however, I should be glad their jurisdiction were once established. The question is not, whether their jurisdiction was justly fixed; but whether it be really fixed; whether it constitutes a part of the laws of the country, and is in every respect relative to those laws; whether between two powers acknowledged independent, the conditions ought not to be reciprocal; and whether it be not equally the duty of a good subject to defend the prerogative of the prince, and to maintain the limits which from time immemorial he has prescribed to his authority.

THOUGH the ecclesiastic power be so dangerous in a republic, yet it is very proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? A barrier always useful when there is no other: for since a despotic government is productive of the most fatal calamities to human nature, the very evil that restrains it is beneficial to the subject.

IN the same manner as the sea, threatening to overflow the whole earth, is stopped by weeds and pebbles that lie scattered along the shore; so sovereigns, whose power seems unlimited, are restrained by the smallest obstacles, and suffer their natural pride to be subdued by supplication and prayer.

THE English, to favour their liberty, have abolished all the intermediate powers of which their monarchy was composed. They have a great deal

of reason to be jealous of this liberty; were they ever to be so unhappy as to lose it, they would be the most servile people in the world.

MRC LAW, through ignorance both of a republican and monarchical constitution, was one of the greatest promoters of despotism ever known in Europe. Besides the violent and extraordinary changes owing to his direction, he would fain suppress all the intermediate ranks, and abolish the political communities. He was dissolving the monarchy by his chimerical reimbursements, and seemed as if he even was desirous of redeeming the constitution.

IT is not enough to have intermediate powers in a monarchy; there must be also a depositary of the laws. This depositary can only be the judges of the supreme courts of justice, who promulge the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence, and contempt of civil government, require there should be a body invested with a power of reviving and executing the laws, which would be otherwise continually forgotten. The prince's council are not a proper depositary. They are naturally the depositary of the momentary will of the prince, and not of the fundamental laws. Besides, the prince's council is always changing; it is neither permanent, nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is incapable to set them right in difficult conjunctures, or to reduce them to proper obedience.

DESPO TIC governments, where there are no fundamental laws, have no such kind of depositary.

§ Ferdinand king of Aragon made himself grand-master of the orders, and that alone changed the constitution.

Hence it is that religion has generally so much influence in those nations, because it forms a kind of permanent depositary; and if this cannot be said of religion, it may of the customs which are respected instead of laws.

C H A P. V.

Of the Laws relative to the Nature of a despotic Government.

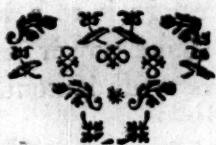
IT results from the nature of despotic power, that the single person, invested with this power, commits the execution of it also to a single person. A man whom his senses continually inform, that he himself is every thing, and his subjects nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But were he to commit the administration to many, there would be continual disputes among them; each would form intrigues to be his first slave; and he would be forced to take the reins into his own hands. It is therefore more natural for him to resign it to a vizir, and to invest him with the same power as himself. The creation of a vizir is a fundamental law of this government.

It is reported of a pope, that he had started a vast number of difficulties against his election, from a thorough conviction of his incapacity. At last he was prevailed on to accept of the pontificate; and resigned the administration entirely to his nephew. He was soon struck with amazement, and said, *I should never have thought that these things*

§ The oriental kings always have vizirs, says Sir John Chardin.

were so easy. The same may be related of the Eastern princes, who, being educated in a prison where eunuchs corrupt their hearts and debase their understandings, and where they are frequently kept ignorant even of their high rank; when drawn forth in order to be placed on the throne, they are at first confounded; but as soon as they have chosen a vizir, and abandoned themselves in their seraglio to the most brutal passions, pursuing, in the midst of a prostituted court, every capricious extravagance; they could never have imagined to find matters so easy.

THE more extensive the kingdom, the larger the seraglio; and consequently the more voluptuous the sovereign. Hence the more nations such a prince has to govern, the less he attends to the cares of government; the more important his affairs, the less he makes them the subject of his deliberations.





B O O K III.

Of the Principles of the three sorts of Government.

C H A P. I.

Difference between the Nature and Principle of Government.

AFTER having enquired into the laws relative to the nature of each government, we must investigate those which relate to its principle.

THERE is this difference between * the nature and principle of government; that the former is that by which it is constituted, the latter that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion.

Now laws ought to be no less relative to the principle than to the nature of each government. We must therefore examine this principle, which shall be the subject of this third book.

C H A P. II.

Of the Principle of different Governments.

I HAVE already remarked, that it is the nature of a republican government, that either the collective body of the people, or particular families,

* This is a very important distinction, from whence I shall draw several consequences; for it is the key of a vast number of laws.

should be possessed of the supreme power: of a monarchy, that the sovereign should have this power, but in the execution of it should be directed by established laws: of a despotic government, that a single person should rule according to his own will and caprice. This enables me to discover their three principles; which are naturally derived from thence. I shall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the Principle of Democracy.

THERE is not much probity necessary to support a monarchical or despotic government. The force of laws in one, and the sovereign's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, which is, *virtue*.

WHAT I have here advanced is confirmed by the unanimous testimony of historians, and is vastly agreeable to the nature of things. For it is plain, that in a monarchy, where he who commands the execution of the laws generally thinks himself above them, there is less need of virtue than in a popular government, where the person entrusted with the execution of the laws is sensible of his being subject to their direction.

IT is evident also, that a monarch, who through bad advice or indolence ceases to enforce the execution of the laws, may easily repair the evil: he has only to follow other advice; or to shake off this indolence. But when, in a popular government, there is a suspension of the laws, as this can proceed

only from the corruption of the republic, the state is certainly undone.

IT was a very droll spectacle in the last century to see the impotent efforts of the English towards the establishment of democracy. As they who had a share in the direction of public affairs were void of virtue; as their ambition was inflamed by the success of the most daring of their members*; as the prevailing parties were successively animated by the spirit of faction, the government was always changing: the people, amazed at so many revolutions, attempted to erect a commonwealth, but in vain. At length, when the country had undergone the most violent shocks, they were forced to have recourse to the very government which they had so wantonly proscribed.

WHEN Sylla wanted to restore Rome to her liberty, this unhappy city was incapable of that blessing. She had only the feeble remains of virtue, which were always diminishing: instead of being roused out of her lethargy by Cæsar, Tiberius, Caius Claudius, Nero, and Domitian, she riveted every day her chains; if she struck some blows, her aim was at the tyrant, but not at the usurpation.

THE politic Greeks, who lived under a popular government, knew no other support than virtue. The modern inhabitants of that country are wholly taken up with manufactures, trade, finances, opulence and luxury.

WHEN virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. The objects of their desires are changed; what they were fond of before, is become indifferent; they were:

* Cromwell.

free, while under the restraint of laws, but they would fain now be free to act against law; and as each citizen is like a slave who has run away from his master, what was a maxim of equity he names rigour; what was a rule of action he stiles constraint; and to precaution he gives the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now this is become the patrimony of private persons. The members of the commonwealth riot on the public spoils, and its strength is only the power of a few, and the licentiousness of many.

ATHENS was possessed of the same number of forces, when she triumphed so gloriously, and when with so much infamy she was enslaved. She had twenty thousand citizens §, when she defended the Greeks against the Persians, when she contended for empire with Sparta, and invaded Sicily. She had twenty thousand when Demetrius Phalerens numbered them*, as slaves are reckoned by the head in a market-place. When Philip attempted to lord it over Greece, and appeared at the gates of Athens †, she had even then lost nothing but time. We may see in Demosthenes how difficult it was to awake her: she feared Philip, not as the enemy of her liberty, but of her pleasures §. This celebrated city, which had withstood so many de-

§ Plutarch, life of Pericles, Plato in Critia

* She had at that time twenty-one thousand citizens, ten thousand strangers, and four hundred thousand slaves. See Atheraus, Book 6.

† She had then twenty thousand citizens. See Demosthenes in Aristotog:

§ They had passed a Law, which rendered it a capital crime for any one to propose applying the money designed for the theatres to military service.

seats, and after having been so often destroyed, had as often risen out of her ruins, was overthrown at Chæroneæ, and at one blow deprived of all hopes of resource. What does it avail her, that Philip sends back her prisoners, if he does not return her men? It was ever after as easy to triumph over the Athenian forces, as it had been difficult to overcome her virtue.

How was it possible for Carthage to maintain her ground? When Hannibal, upon his being made prætor, endeavoured to prevent the magistrates from plundering the republic, did not they complain of him to the Romans? Wretches, who would fain be citizens without a city, and beholden for their riches to their very destroyers! Rome soon insisted upon having three hundred of their principal citizens as hostages; she forced them next to surrender their arms and ships; and then she declared war†. From the desperate efforts of this defenceless city, one may judge of what she might have done in her full vigour, and aided by virtue.

C H A P. IV.

Of the Principle of Aristocracy.

SINCE virtue is requisite in a popular government, it is necessary also under an aristocracy. True it is, that in the latter it is not so absolutely requisite.

THE people, who in respect to the nobility are the same as the subjects with regard to a sovereign, are restrained by their laws. They have, there-

† This lasted three years.

fore, less occasion for virtue than the people in a democracy. But how are the nobility to be restrained? They who are to execute the laws against their colleagues, will immediately perceive they are acting against themselves. Virtue is therefore necessary in this body, from the very nature of the constitution.

AN aristocratical government has an inherent vigour, which democracy has not. The nobles form a body, who by their prerogative, and for their own particular interest, restrain the people; it is sufficient, that there are laws in being to see them executed.

BUT easy as it may be for the body of the nobles to restrain the people, it is difficult to restrain themselves*. Such is the nature of this constitution, that it seems to subject the very same persons to the power of the laws, and at the same time to exempt them.

NOW such a body as this can restrain itself only two ways; either by a very eminent virtue, which puts the nobility in some measure on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them at least upon a level with one another, and on this depends their preservation.

MODERATION is therefore the very soul of this government; a moderation I mean founded on virtue, not that which proceeds from indolence and pusillanimity.

* Public crimes may be punished, because it is here a common concern; but private crimes will go unpunished, because it is the common interest not to punish them.

C H A P. V.

That Virtue is not the Principle of a monarchical Government.

POLICY does great things in monarchies, with as little virtue as possible. Thus in the nicest machines, art has reduced the number of movements, springs, and wheels.

THE state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and are known to us only by story.

THE laws supply here the place of those virtues; they are by no means wanted, and the state dispenses with them: an action performed here in secret is in some measure of no consequence.

THOUGH all crimes be in their own nature public, yet there is a distinction between crimes really public, and those that are private, which are so called, because they are more hurtful to individuals than to the community.

Now in republics private crimes are more public, that is, they attack the constitution more than they do individuals; and in monarchies, public crimes are more private, that is, they are more prejudicial to private people than to the constitution.

I HOPE that no one will be offended with what I have been saying; my observations are founded on the unanimous testimony of historians. I am not ignorant that virtuous princes are no such very rare instance; but I venture to affirm, that in a mo-

narchy, it is extremely difficult for the people to be virtuous*.

LET us compare what the historians of all ages have asserted concerning the courts of monarchs; let us recollect the conversations and sentiments of people of all countries in respect to the wretched character of courtiers; and we shall find, that these are not airy speculations, but truths confirmed by a melancholy experience.

AMBITION in idleness, meanness mixed with pride; a desire of riches without industry; aversion to truth; flattery, perfidy, violation of engagements, contempt of civil duties, fear of the prince's virtue, hope from his weakness, but above all, a continual ridicule cast upon virtue, are, I think, the characteristics by which most courtiers in all ages and countries have been constantly distinguished. Now it is exceeding difficult for the leading men of the nation to be knaves, and the inferior sort to be honest; for the former to be cheats, and the latter to be content with being only dupes.

BUT if there should chance to be some unlucky honest man † among the people, Cardinal Richelieu, in his political testament, seems to hint, that a prince should take care not to employ him. ¶ So true is it, that virtue is not the spring of this government! It is not indeed excluded, but it is not the spring of government.

* I speak here of political virtue, which is also moral virtue, as it is directed to the public good; very little of private moral virtue, and not at all of that virtue which relates to revealed truths. This will appear better, Book V. chap. 2.

† This is to be understood in the sense of the preceding note.

¶ We must not, says he, employ people of mean extraction, they are too rigid and morose.

C H A P. VI.

How Virtue is supplied in a monarchical Government.

BUT it is high time for me to have done with this subject, lest I should be suspected of writing a satire against monarchical government. Far be it from me; if monarchy wants one spring, it is provided with another. Honour, that is, the prejudice of every person and rank, supplieth the place of the political virtue, of which I have been speaking, and is every where her representative: here it is capable of inspiring the noblest actions, and, joined with the force of laws, may lead us to the end of government as well as virtue itself.

HENCE, in well regulated monarchies, they are almost all good subjects, and very few good men; for to be a good man †, a good intention is necessary §, and we should love our country not so much on our own account, as out of love to the community.

C H A P. VII.

Of the Principles of Monarchy.

A Monarchical government supposeth, as we have already remarked, pre-eminences and ranks, as likewise a noble descent. Now since it is the nature of honour to aspire to preferments and titles, it is properly placed in this government.

† This word *good man* is understood here in a political sense only.

§ See the note p. 34.

AMBITION is hurtful in a republic. But in a monarchy it has some good effects; it gives life to the government, and is attended with this advantage, that it is no way dangerous, because it may be continually restrained.

IT is with this kind of government as with the system of the world, in which there is a power that constantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honour sets all the parts of the body politic in motion, and by its very action connects them; thus each individual advances the public good, while he only thinks of promoting his own interest.

TRUE it is, that, philosophically speaking, it is a false honour which moves all the parts of the government; but even this false honour is as useful to the public, as true honour could possibly be to private people.

Is it not a very great point, to oblige men to perform the most difficult actions, such as require an extraordinary exertion of valour and resolution, without any other reward, than that glory and applause?

C H A P. VIII.

That Honour is not the Principle of despotic Government.

HONOUR is far from being the principle of despotic government: mankind being here all upon a level, no one person can prefer himself to another; and as on the other hand they are all slaves, they can give themselves no kind of preference.

BESIDES, as honour has its laws and rules; as it knows not how to submit; as it depends in a great measure on a man's own caprice, and not on that of another person; it can be found only in countries in which the constitution is fixed, and where they are governed by settled laws.

How can despotism bear with honour? This glories in the contempt of life; and that is founded in the power of taking it away. How can honour, on the contrary, bear with despotism? The former has its fixed rules, and peculiar caprices; but the latter is directed by no rule, and its own caprices are subversive of all others.

HONOUR therefore, a thing not known in arbitrary governments, some of which have not even a proper word to express it, is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themselves.

CHAP. IX.

Of the Principle of despotic Government.

AS virtue is necessary in a republic, and in a monarchy honour, so fear is necessary in a despotic government: with respect to virtue, there is no occasion for it, and honour would be very dangerous.

HERE the immense power of the sovereign is devolved intirely upon those, whom he is pleased to intrust with the administration. Persons capable of setting a value upon themselves would be likely to create disturbances. Fear must therefore

depress their spirits, and extinguish even the least sense of ambition.

A MODERATE government may, whenever it pleases, and without the least danger, relax its springs. It supports itself by the laws, and by its own internal strength. But when a despotic prince ceases one single moment to lift up his arm, when he cannot instantly demolish those whom he has entrusted with the first employments *, all is over: for as fear, the spring of this government, no longer subsists, the people are left without a protector.

It is probably in this sense the Cadis maintained that the Grand Seignior was not obliged to keep his word or oath, when he limited thereby his authority †.

It is necessary that the people should be judged by laws, and the great men by the caprice of the sovereign; that the lives of the lowest subject should be safe, and the bashaw's head always in danger. We cannot mention these monstrous governments without horror. The Sophi of Persia, dethroned in our days by Mahomet the son of Miriveis, beheld the constitution subverted before this revolution, because he had been too sparing of blood ‡.

HISTORY informs us, that the horrid cruelties of Domitian terrified the governors so, that the people recovered themselves a little under his reign.* Thus a torrent lays waste one side of a country, and on the other leaves fields untouched, where the eye is refreshed by the sight of fine meadows.

* As it often happens in a military aristocracy.

† Ricault on the Ottoman Empire.

‡ See the history of this revolution by father Duercean.

* His was a military constitution, which is one of the species of despotic government.

CHAP. X.

Difference of Obedience in moderate and despotic Governments.

IN despotic states, the nature of government requires the most passive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect.

HERE they have no limitations or restrictions, no mediums, terms, equivalents, or remonstrances; no change to propose; man is a creature that blindly submits to the absolute will of the prince.

IN a country like this they are no more allowed to represent their dread of a future danger, than to impute their miscarriage to the capriciousness of fortune. Man's portion here, like that of beasts, is instinct, compliance and punishment.

LITTLE does it then avail to plead the sentiments of nature, filial respect, conjugal or parental tenderness, the laws of honour, or want of health; the order is given, and that is sufficient.

IN Persia, when the king has condemned a person, it is no longer lawful to mention his name, or to intercede in his favour. Even if the prince were intoxicated, or out of his senses, the decree must be executed ¶; otherwise he would contradict himself, and the law admits of no contradiction. This has been the way of thinking in that country in all ages; as the order which Ahasuerus gave, to exterminate the Jews, could not be revoked, they were allowed the liberty of defending themselves.

ONE thing however may be sometimes opposed

¶ See Sir John Chardin.

to the sovereign's will †, namely, religion. They will abandon, nay they will murder a parent, if the prince so commands; but he cannot oblige them to drink wine. The laws of religion are of a superior nature, because they bind the prince as well as the subject. But with respect to the law of nature, it is otherwise; the prince is no longer supposed to be a man.

IN monarchical and moderate states, the power is limited by its very spring, I mean, by honour, which like a monarch reigns over the sovereign and his people. They will not alledge to their prince the laws of religion; a courtier would be apprehensive of rendering himself ridiculous. But the laws of honour will be appealed to on all occasions. Hence arise the restrictions necessary to obedience; honour is naturally subject to whims, by which the subject's submission will be always directed.

THOUGH the manner of obeying be different in these two sorts of government, the power is the same. On which side soever the monarch turns, he inclines the scale, and is obeyed. The whole difference is, that in a monarchy the sovereign receives instruction, at the same time that his ministers have greater abilities, and are more versed in public affairs than the ministers of a despotic government.

CH A P. XI.

Reflections on the preceding Chapters.

SUCH are the principles of the three kinds of government: which does not imply, that in

† See Sir John Chardin.

a particular republic they really are, but that they ought to be, virtuous: nor does it prove, that in a particular monarchy they are actuated by honour, or in a particular despotie government by fear; but that they ought to be directed by these principles, otherwise the government is imperfect.



B O O K IV.

*That the Laws of Education ought to be relative to
the Principles of Government.*

C H A P. I.

Of the Laws of Education.

THE laws of education are the first impressions we receive; and as they prepare us for civil life, every private family ought to be governed by the plan of that great household which comprehends them all.

If the people in general have a principle, their constituent parts, that is, the several families, will have one also. The laws of education will be therefore different in each kind of government; they will have honour for their object in monarchies; virtue in republics; and fear in despotic governments.

C H A P. II.

Of Education in Monarchies.

IN monarchies the chief branch of education is not taught in colleges or academies. It commences, in some measure, at our setting out in the world; for this is the school of what we call honour, that universal preceptor which ought to be our guide every where.

HERE it is that we constantly hear three rules or maxims, viz. *that we should have a certain nobleness in our virtues, a kind of freedom in our morals, and a particular politeness in our behaviour.*

THE virtues we are here taught, are less what we owe to others, than to ourselves; they are not so much what draws us towards society, as what distinguishes us from our fellow citizens.

HERE the actions of men are judged, not as virtuous, but as shining; not as just, but as great; not as reasonable, but as extraordinary.

WHEN honour here meets with any thing noble in our actions, it is either a judge that approves them, or a sophister who justifies them.

IT allows of gallantry when united with the idea of sensible affection, or with that of conquest; this is the reason why so strict a purity of morals is never to be found in monarchies as in republican governments.

IT allows of cunning and craft, when joined with the notion of magnanimity or importance of affairs; as, for example, in politics, with whose finesies it is far from being offended.

IT does not forbid adulation, but when separate from the idea of a large fortune, and connected only with the sense of our low condition.

WITH respect to morals, I have observed, that the education of monarchies ought to admit of a certain frankness and open carriage. Truth therefore in conversation is here a necessary point. But is it for the sake of truth? By no means. Truth is requisite only, because a person habituated to veracity has an air of boldness and freedom. And indeed, a man of this stamp seems to lay a stress on

ly on the things themselves, not on the manner in which they are received.

HENCE it is, that in proportion as this sort of frankness is commended, that of the common people is contemned, which has nothing but truth and simplicity for its object.

IN a word, the education of monarchies requires a certain politeness of behaviour. Man, a sociable animal, is formed to please in society; and a person that would break through the rules of decency, so as to shock those he conversed with, would lose the public esteem, and become incapable of doing any good.

BUT politeness, generally speaking, does not derive its original from so pure a source. It rises from a desire of distinguishing ourselves. It is pride that makes us polite: we are flattered with being taken notice of for a behaviour that shews we are not of a mean condition, and that we have not been bred up with those who in all ages are considered as the scum of the people.

POLITENESS, in monarchies, is naturalised at court. One man excessively great renders every body else little. Hence that regard, which is paid to our fellow subjects; hence that politeness, equally pleasing to those by whom, as to those towards whom, it is practised; because it gives people to understand, that a person actually belongs, or at least deserves to belong, to the court.

A COURT air consists in quitting a real for a borrowed greatness. The latter pleases the courtier more than the former. It inspires him with a certain disdainful modesty, which shews itself externally, but whose pride insensibly diminishes in proportion to its distance from the source of this greatness.

AT court we find the delicacy of taste in every thing, a delicacy arising from the constant use of the superfluities of life, from the variety, and especially the satiety of pleasures, from the multiplicity and even confusion of fancies, which, if they are but agreeable, are sure of being well received.

THESE are the things which properly fall within the province of education, in order to make what we call a man of honour, a man possessed of all the qualities and virtues requisite in this sort of government.

HERE it is, that honour interferes with every thing, mixing even with people's manner of thinking, and directing their very principles.

To this whimsical honour it is owing that the virtues are only just what it pleases; it adds rules of its own invention to every thing prescribed to us; it extends or limits our duties according to its own fancy, whether they proceed from religion, politics, or morality.

THERE is nothing so strongly inculcated in monarchies, by the laws, by religion, and by honour, as a submission to the sovereign's will; but this very honour tells us that the prince never ought to command a dishonourable action, because this would make us incapable of serving him.

CRILLION refused to murder the duke of Guise, but offered to fight him. After the massacre of St. Bartholomew, Charles IX. having sent orders to the governors in the several provinces for the Hugonots to be slaughtered, viscount Dorte, who commanded at Bayonne, wrote as follows to the king, * *Sire, among the inhabitants of this town, and your majesty's troops, I could not find so much as one ex-*

* See D'Aughine's history.

executioner; they are honest citizens and brave soldiers. We jointly therefore intreat your majesty to command our arms and lives in things that are practicable. This great and generous soul looked upon a base action as a thing impossible.

THERE is nothing that honour more strongly recommends to the nobility, than to serve their prince in a military capacity. And indeed this is their favourite profession, because its dangers, its success, and even its miscarriages, are the road to grandeur. Yet this very law of its own making, honour chuses to explain; and in case of any affront, it requires or permits us to retire.

IT insists also that we should be at liberty either to seek or to reject employments; a liberty which it prefers even to a large fortune.

HONOUR therefore has its sovereign laws, to which education is obliged to conform*. The chief of these are, that we are permitted to set a value upon our fortune, but are absolutely forbidden to set any upon our lives.

THE second is, that when we are raised to a post or preferment, we should never do or permit any thing, which may seem to imply that we look upon ourselves as inferior to the rank we hold.

THE third is, that those things which honour forbids, are more rigorously forbidden, when the laws do not concur in the prohibition; and those it commands, are more strongly insisted upon, when they happen not to be commanded by law.

* We mention here, what actually is, and not what ought to be: honour is a prejudice, which religion sometimes endeavours to remove, and other times to regulate.

C H A P. III.

Of Education in a despotic Government.

AS education in monarchies tends to exalt and ennoble the mind, in despotic governments its only aim is to debase it. Here it must necessarily be servile; even in power such an education will be an advantage, because every tyrant is at the same time a slave.

EXCESSIVE obedience supposes ignorance in the person that obeys: the same it supposes in him that commands; for he has no occasion to deliberate, to doubt, to reason; he has only to will.

IN despotic states, each house is a separate government. As education therefore consists chiefly in social converse, it must be here very much limited; all it does is to strike the heart with fear, and to imprint on the understanding a very simple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and as to virtue, Aristotle cannot think there is any one virtue belonging to slaves*; if so, education in despotic countries is confined within very narrow bounds.

HERE therefore education is in some measure needless: to give something, one must take away every thing: and begin with making a bad subject, in order to make a good slave.

FOR why should education take pains in forming a good citizen, only to make him share in the public misery? If he loves his country, he will strive to relax the springs of government; if he miscarries, he will be undone; if he succeeds, he

* Polit, lib. 1.

must expose himself, his sovereign, and his country, to ruin.

CHAP. IV.

Difference between the Effects of ancient and modern Education.

MOST of the ancients lived under governments that had virtue for their principle; and when this was in full vigour, they performed actions unusual in our times, and at which our narrow minds are surprized.

ANOTHER advantage their education had over ours; it never was effaced by contrary impressions. Epaminondas, the last year of his life, said, heard, beheld, and performed the same things, as at the age in which he received the first principles of his education.

IN our days we receive three different or contrary educations, namely, of our parents, of our masters, and of the world. What we learn in the latter, effaces all the ideas of the former. This in some measure arises from the contrast we experience between our religious and worldly engagements; a thing which the ancients knew nothing of.

CHAP. V.

Of Education in a republican Government.

IT is in a republican government that the whole power of education is required. The fear of despotic governments naturally rises of itself amidst threats and punishments; the honour of monarchies is favoured by the passions, and favours them in its

turn: but virtue is a self-renunciation, which is always arduous and painful.

THIS virtue may be defined, the love of the laws and of our country. As such love requires a constant preference of public to private interest, it is the source of all private virtues; for they are nothing more than this very preference itself.

THIS love is peculiar to democracies. The government is intrusted to private citizens in these alone. Now government is like every thing else: to preserve it, we must love it.

HAS it ever been heard that sovereigns were not fond of monarchy, or that despotic princes despised arbitrary power?

EVERY thing therefore depends on establishing this love in a republic; and to inspire it ought to be the chief business of education: but the surest way of instilling it into children, is for parents to set them an example.

PEOPLE have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions.

IF it happens otherwise, it is because the impressions made at home are effaced by those they have received abroad.

IT is not the young people that degenerate: they are not spoilt till those of maturer age are already sunk into corruption.

CHAP. VI.

Of some Institutions among the Greeks.

THE ancient Greeks, convinced of the necessity that people who live under a popular government should be trained up to virtue, made ve-

ry singular institutions in order to inspire it. Upon beholding in the life of Lycurgus the laws that legislator gave to the Lacedæmonians, I imagine, I am reading the history of the Sevarambes. The laws of Crete were the model of those of Sparta; and those of Plato reformed them.

LET us reflect here a little on the extensive genius with which those legislators have been endowed, to perceive, that by striking at received customs, and by confounding all sorts of virtues, they should display their wisdom to the world. Lycurgus, by blending theft with the spirit of justice, the hardest servitude with excess of liberty, the most rigid sentiments with the greatest moderation, gave stability to his city. He seemed to deprive her of all resources, such as arts, trade, money, walls: ambition prevailed among the citizens without hopes of improving their fortune; they had natural sentiments without the tie of a son, husband, or father; and chastity was stript even of modesty and shame. This was the road that led Sparta to grandeur and glory; and so infallible were these institutions, that it signified nothing to gain a victory over that republic, without subverting her polity †.

By these laws Crete and Laconia were governed. Sparta was the last that fell a prey to the Macedonians, and Crete to the Romans §. The Samnites had the same institutions, which furnished those

† Philopœmen oblig'd the Lacedæmonians to change their manner of educating their children, being convinced, that if he did not take this measure, they would always be noted for their magnanimity. *Plutarch, Life of Philopœmen.* See Livy, book 38.

§ She defended her laws and liberties for the space of three years. See the 98th, 99th, and 100th book of Livy, in Florus's epitome. She made a braver resistance than the greatest kings.

very Romans with the subject of four and twenty triumphs ¶.

A CHARACTER so extraordinary in the institutions of Greece, has shewn itself lately in the dregs and corruption of modern times †. A very honest legislator has formed a people, to whom probity seems as natural as bravery to the Spartans. Mr. Penn is a real Lycurgus; and though the former made peace his principal aim, as the latter did war, yet they resemble one another in the singular way of living to which they reduced their people, in the ascendant they had over free men, in the prejudices they subdued, and in the passions which they overcame.

ANOTHER instance we have from Paraguay: This has been the subject of an invidious charge against a society that considers the pleasure of commanding as the only happiness in life: but it will always be a glorious undertaking to render government subservient to human happiness §.

IT is glorious indeed for this society to have been the first in pointing out to those countries the idea of religion joined with that of humanity. By repairing the devastations of the Spaniards, she has begun to heal one of the most dangerous wounds that mankind ever received.

AN exquisite sensibility to whatever she distinguishes by the name of honour, joined to her zeal for a religion which is far more humbling in respect to those who receive, than to those who

¶ Florus, lib. 1.

† *In face Romuli.* Cicero.

§ The Indians of Paraguay do not depend on any particular lord, they pay only a fifth of the taxes, and are allowed the use of fire-arms to defend themselves.

preach its doctrines, has set her upon grand undertakings, which she has successfully accomplished. She has drawn wild people from their woods, secured them a maintenance, and clothed their nakedness; and had she only by this step improved the industry of mankind, it would have been sufficient to eternize her fame.

THEY who shall attempt hereafter to introduce the like institutions, must establish the community of goods as prescribed in Plato's republic; that high respect he required for the gods; that separation from strangers, for the preservation of morals; and an extensive commerce carried on by the community, and not by private citizens: they must give our arts without our luxury, and our wants without our desires.

THEY must proscribe money, the effect of which is to swell people's fortunes beyond the bounds prescribed by nature; to learn to preserve for no purpose what has been idly hoarded up; to multiply without end our desires; and to supply the barrenness of nature, of whom we have received very scanty means of inflaming our passions, and of corrupting each other.

“THE Epidamnians § perceiving their morals depraved by conversing with barbarians, chose a magistrate for making all contracts and sales in the name and behalf of the city.” Commerce then does not corrupt the constitution, and the constitution does not deprive the society of the advantages of commerce.

§ Plutarch in his questions concerning the Greek affairs.

C H A P. VII.

In what Case these singular Institutions may be of Service.

THIS sort of institutions may be proper in republics, because they have virtue for their principle; but to stir up men to honour in monarchies, or to imprint fear in despotic governments, less pains are necessary.

BESIDES, they cannot take place but in a little state §, in which there is a possibility of a general education, and of training up the body of the people like a single family.

THE laws of Minos, of Lycurgus, and of Plato, suppose a particular attention and care, which the citizens ought to have over each other's conduct. But an attention of this kind cannot be expected in the confusion, and multitude of affairs in which a large nation is intangled.

IN this sort of institutions, money, as we have before remarked, must be banished. But in great societies, the multiplicity, variety, embarrassment, and importance of affairs, as well as the facility of purchasing, and the slowness of exchange, require a common measure. In order to extend or support our power, we must be possessed of the means to which, by the universal consent of mankind, this power is annexed.

§ Such as were formerly the cities of Greece.

C H A P. VIII.

Explication of a Paradox of the Ancients, with regard to Manners.

POLYBIUS, that judicious writer, informs us, that music was necessary to soften the manners of the Arcadians, who inhabit a cold gloomy country; that the inhabitants of Cynete, who slighted music, were the most cruel of all the Greeks, and that no other town was so immersed in debauchery and luxury. Plato is not afraid to affirm, that there is no possibility of making a change in music, without altering the frame of government. Aristotle, who seems to have written his politics only in order to contradict Plato, agrees with him, notwithstanding, in regard to the power and influence of music over the manners of the people. This was likewise the opinion of Theophrastus, of Plutarch §, and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their polity ¶. Thus it was they enacted laws, and thus they required that cities should be governed.

I IMAGINE this may be explained in the following manner. It is observable, that in the cities of Greece, especially those whose principal object was war, all lucrative arts and professions were considered as unworthy of a freeman. *Most arts,* says

§ Life of Pelopidas.

¶ Plato, in book 4th of his laws, says, that the prefectures of music and gymnastic exercises are the most important employments in the city; and in his Republic, book 3d, Damon will tell you, says he, what sounds are capable of corrupting the mind with base sentiments, or of inspiring the contrary virtues.

Xenophon *, corrupt and enervate the bodies of those that exercise them; they oblige them to sit under a shade, or near the fire. They can find no leisure either for their friends or for the republic. It was only by the corruption of some democracies that artificers became freemen. This Aristotle informs us †, who maintains, that a well-regulated republic will never give them the right and freedom of the city §.

AGRICULTURE was also a servile profession, and generally practised by the inhabitants of vanquished countries. Such as the *Helotes* among the Lacedæmonians, the *Perieciæns* among the Cretans, the *Penestes* among the Thessalians, and other conquered people in other republics.

IN short, every kind of low commerce † was infamous among the Greeks; as it obliged a citizen to serve and wait on a slave, or on a lodger, or a stranger. This was a notion that clashed with the spirit of Greek liberty; hence Plato * in his laws orders a citizen to be punished if he attempted to concern himself with trade.

THUS in the Greek republics the magistrates were greatly embarrassed. They would not have

* Book 5th of memorable sayings.

† Polit. book 3d, chap. 4th.

§ Diophantes, says Aristotle, Polit. ch. 7th, made a law formerly at Athens, that artificers should be slaves to the republic.

¶ Plato and Aristotle also require slaves to till the land, Laws, Book V. Polit. Book VII. ch. 10. True it is, that agriculture was not every where exercised by slaves: on the contrary, Aristotle observes, the best republics were those in which the citizens themselves tilled the land: but this was brought about by the corruption of the ancient governments, which were become democratical: for in earlier times the cities of Greece were subject to an aristocratic government.

† Cauponatio.

* Book 2d.

the citizens apply themselves to trade, to agriculture, or to the arts; and yet they would not have them idle. They found therefore employment for them in gymnastic and military exercises; and none else were allowed by their institution †. Hence the Greeks must be considered as a society of wrestlers and boxers. Now these exercises having a natural tendency to make people hardy and fierce, there was a necessity for tempering them with others that might soften their manners §. For this purpose, music, which influences the mind by means of the corporeal organs, was very proper. It is a kind of medium between manly exercises which harden the body, and speculative sciences, which are apt to render us unsocial and sour. It cannot be said that music inspired virtue, for this would be inconceivable: but it prevented the effects of a savage institution, and enabled the soul to have such a share in the education, as it could never have had without the aid of harmony.

LET us suppose among ourselves a society of men, so passionately fond of hunting, as to make it their sole employment: they would undoubtedly contract thereby a kind of rusticity and fierceness. But if they happened to imbibe a taste for music, we should soon perceive a sensible difference in their customs and manners. In fine, the exercises used by the Greeks could raise only one sort

|| *Arist. Polit. lib. 10.*

† *Arta corporum exercendorum gymnastica, variis certaminibus terenderum pædastilica.* *Arist. Polit. l. 8. c. 5.*

§ Aristotle remarks, that the children of the Lacedæmonians, who began those exercises when very young, contracted from thence too great a ferocity and rudeness of behaviour. *Polit. lib. 8. c. 4.*

of passions, viz. fierceness, indignation and cruelty. But music excites all these; and is also able to inspire the soul with a sense of pity, lenity, tenderness, and love. Our moral writers, who declaim so vehemently against the stage, sufficiently demonstrate the power of music over the mind.

IF the above-mentioned society were to have no other music than that of drums, and the sound of the trumpet, would it not be more difficult to accomplish this end, than by the more melting tones of softer harmony? the ancients were therefore in the right, when under particular circumstances they preferred one mode to another in regard to manners.

BUT some will demand, why should music be pitched upon preferable to any other entertainment? It is because of all sensible pleasures, there is none that less corrupts the soul. We blush to read in Plutarch || that the Thebans, in order to render the manners of the youth more mild, authorised by law a passion, which ought to be proscribed by all countries.

|| Life of Pelopidas.



B O O K V.

That the Laws given by the Legislator should be relative to the Principle of Government.

C H A P. I.

Idea of this Book.

IT has been shewn in the preceding book, that the laws of education ought to be relative to the principle of each government. Now the same may be said of those which the legislator gives to the whole society. The relation of laws to this principle strengthens the several springs of government; and this principle derives from thence, in its turn, a new degree of vigour. And thus it is in mechanics, that action is always followed by re-action.

OUR design is to examine this relation in each government, beginning with the republican state, whose principle is virtue.

C H A P. II.

What is meant by Virtue in a Political State.

VIRTUE, in a republic, is a very simple thing; it is a love of the republic; it is a sensation, and not a consequence of acquired knowledge: a sensation, that may be felt by the meanest as well as by the highest person in the state. When the

common people adopt good maxims, they adhere to them steadier than those we call gentlemen. It is very rare that corruption begins with the former; nay they often derive from their imperfect light a stronger attachment to the established laws and customs.

THE love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The less we are able to satisfy our private passions, the more we abandon ourselves to those of a general nature. How comes it that monks love their order so well? it is owing to the very cause that renders the order insupportable. Their rule debars them of all those things by which the ordinary passions are fed; there remains therefore only this passion for the very rule that torments them. The more austere it is, that is, the more it curbs their inclinations, the more power it gives to the only passion left them.

CHAP. III.

What is understood by a Love of the Republic in a Democracy.

A LOVE of the republic in a democracy is a love of the democracy; as the latter is that of equality.

A LOVE of the democracy is likewise that of frugality. Since every individual ought here to enjoy the same happiness and the same advantages, consequently they should taste the same pleasures, and form the same hopes; which cannot be expected but from a general frugality.

THE love of equality in a democracy limits ambition to the sole desire, to the sole happiness of do-

ing greater services to our country than the rest of our fellow citizens. They cannot all render her equal services, but they ought all to serve her with equal alacrity. At our birth, we contract an immense debt to our country, which we can never discharge.

HENCE distinctions here arise from the principle of equality, even when it seems to be removed by signal services, or superior abilities.

THE love of frugality limits the *desire of having* to the study of procuring necessities to our family, and superfluities to our country. Riches give a power which a citizen cannot use for himself, for then he would be no longer equal. They also procure pleasures which he ought not to enjoy, because these would be also repugnant to the equality.

THUS well-regulated democracies, by establishing domestic frugality, made way at the same time for public expences, as happened at Rome and Athens, when magnificence and profusion arose from the very fund of frugality. And as religion commands us to have pure and unspotted hands when we make our offerings to the gods, the laws required a frugality of life to enable them to be liberal to our country.

THE good sense and happiness of individuals depend greatly on the mediocrity of their abilities and fortunes. Therefore, as a republic, where the laws have placed many in a middling station, is composed of wise men, it will be wisely governed; as it is composed of happy men, it will be very happy.

CHAPTER IV.

In what manner the Love of Equality and Frugality is inspired.

THE love of equality and of a frugal economy is greatly excited by equality and frugality themselves, in societies, where both these virtues are established by law.

IN monarchies and despotic governments, no body aims at equality; this they do not so much as think of; they all aspire to superiority. People of the very meanest rank desire to emerge from their obscurity, only to lord it over their fellow subjects.

IT is the same with regard to frugality. To love it, we must practise and enjoy it. It is not those who are enervated with pleasure, that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the world. Neither is it those who envy or admire the luxury of the great; people that have, present to their view none but rich men, or men miserable like themselves, detest their miserable condition, without loving or knowing the real term or point of misery.

A TRUE maxim it is therefore, that in order to love equality and frugality in a republic, these virtues must have been previously established by law.

CHAP. V.

How the Laws establish Equality in a Democracy.

SOME ancient legislators, as Lycurgus and Romulus, made an equal division of lands. A settlement like this can never take place but upon the foundation of a new republic; or when the old one is so corrupt, and the minds of the people are so disposed, that the poor think themselves obliged to demand, and the rich obliged to consent to, a remedy of this nature.

If the legislator, in making a division like this, does not enact laws at the same time to support it, he forms only a temporary constitution; inequality will break in where the laws have not precluded it, and the republic will be ruined.

HENCE, for the preservation of this equality, it is absolutely necessary there should be some regulation with regard to women's dowries, donations, successions, testamentary settlements, and all other forms of contracting. For were it once allowed to dispose of our property to whom and how we pleased, the will of each individual would disturb the order of the fundamental law.

SOLON, by allowing the Athenians, upon failure of issue*, to leave their estates to whom they pleased, acted contrary to the ancient laws, by which the estates were ordered to continue in the family of the testator ‡; and even contrary to his own laws, for by abolishing debts, he had aimed at equality.

THE law which prohibited people's having two

* Plutarch, life of Solon.

‡ Ibid.

inheritances*, was very well adapted for a democracy. It derived its origin from the equal distribution of lands and portions made to each citizen. The law would not allow a single man to possess more than a single portion.

FROM the same source arose those laws by which the next relation was ordered to marry the heiress. This law was given to the Jews after the like distribution. Plato†, who grounds his laws on this division, made the same regulation, which had been received as a law by the Athenians.

AT Athens there was a law, whose spirit, in my opinion, has not been hitherto rightly understood. It was lawful to marry a sister only by the father's side, but it was not permitted to espouse a sister by the same venter‡. This custom was originally owing to republics, whose spirit would not permit, that two portions of land, and consequently two inheritances, should devolve on the same person. A man who espoused his sister only by the father's side, could inherit but one estate, namely, that of his father: but by marrying his sister by the same venter, it might happen that this sister's father, having no male issue, might leave her his estate, and consequently the brother, who married her, might be possessed of two.

To object what Philo says¶, that although the

* *Philolaus* of Corinth made a law at Athens, that the number of the portions of land and that of inheritances should be always the same. *Arist. Polit. lib. 2. cap. 12.*

† Republic. book 8.

§ *Cornelius Nepos* in *prefat.* This custom began in the earliest times. Thus *Abraham* says of *Sarah*, *She is my sister, my father's daughter, but not my mother's.* The same reasons occasioned the establishing the same law among different nations.

¶ *De specialibus legibus quæ pertinent ad præcepta Decalogi.*

Athenians were permitted to marry a sister by the father's side, and not by the mother's, would avail little; yet the contrary practice prevailed among the Lacedæmonians, who were permitted to espouse a sister by the mother's side, and not by the father's. For I find in Strabo *, that at Sparta, whenever a woman was married to her brother, she had half his fortune for her dowry. Plain it is, that this second law was made, in order to prevent the bad consequences of the former. That the estate belonging to the sister's family might not devolve on the brother's, they gave half the brother's estate to the sister for her dowry.

SENECA †, speaking of Silanus, who had married his sister, says, that the permission was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any such thing as a division of estates.

THAT was a good law, which, in order to maintain this division of lands in a democracy, ordained, that a father, who had several children, should pitch upon one of them to inherit his portion §, and leave the others to be adopted, to the end that the number of citizens might always be kept upon an equality with that of the divisions.

PHALES of Chalcedon ¶ contrived a very odd method of rendering all fortunes equal in a republic where there was the greatest inequality. This was, that the rich should give fortunes with their daughters to the poor, but receive none themselves;

* Lib. 10.

† *Athenis dimidium licet, Alexandria totum.* Seneca de morte Claudi.

§ Plato has a law of this kind, lib. 3. leg.

¶ Aristot. lib. 2, cap. 7.

and that the poor should receive money for their daughters, instead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under such hard and oppressive conditions, as would make them hate the very equality which they designed to establish. It is proper sometimes that the laws should not seem to tend so directly to the end they propose.

THOUGH real equality be the very soul of a democracy, it is so difficult to establish, that an extreme exactness in this respect would not be always convenient. Sufficient it is to establish a census *, which should reduce or fix the differences to a certain point: it is afterwards the business of particular laws to level as it were the inequalities, by the duties laid upon the rich, and by the ease afforded to the poor. It is moderate riches alone that can give or suffer this kind of compensations; for as to men of over-grown estates, every thing which does not contribute to advance their power and honour, is looked upon by them as an injury.

ALL inequality in democracies ought to be derived from the nature of the government, and even from the principle of equality. For instance, it may be apprehended that people who are obliged to live by their labour would be too much impoverished by a public employment, or neglect the duties attending it; that artisans would grow insolent; and that too great a number of freedmen would over-

* Solon made four classes, the first, of those who had an income of 500 minas either in corn or liquid fruits; the second, of those who had 300, and were able to keep a horse; the third, of such as had only 200; the fourth, of all those who lived by their manual labour.

Plut. Life of Solon.

power the ancient citizens. In this case the equality * in a democracy may be suppressed, for the good of the state. † But this is only an apparent equality; for a man rained by a public employment would be in a worse condition than his fellow citizens; and this same man being obliged to neglect his duty, would reduce the rest to a worse condition than himself; and so forth.

C H A P. VI.

How the Laws should maintain Frugality in a Democracy.

IT is not sufficient that the divisions of land be equal in a well-regulated democracy; they ought also to be small, as was customary among the Romans. “*God forbid*, said Curius to his soldiers †, *that a citizen should look upon that as a small piece of land, which is sufficient to maintain him.*”

As equality of fortunes supports frugality, so the latter maintains the former. These things, though in themselves different, are of such a nature, as to be unable to subsist separately; they reciprocally act upon each other; if one withdraws itself from a democracy, the other always follows it.

It is true, that when a democracy is founded in commerce, private people may acquire immense riches without a corruption of morals. This is because the spirit of commerce is naturally attended with that of frugality, oeconomy, moderation, labour,

* Solon excludes from public employments all those of the fourth class.

† They insisted upon a larger division of the conquered lands. Plutarch's moral works, Lives of the ancient Kings and Commanders.

prudence, tranquillity, order, and rule. So long as this spirit subsists, the riches it produces have no bad effect. The mischief is, when excessive wealth destroys the spirit of commerce, then it is that the inconveniencies of inequality begin to be felt.

In order to support this spirit, trade should be carried on by the principal citizens; this should be their sole aim and study; this the chief object of the laws: and these very laws, by dividing the estates of individuals in proportion to the increase of commerce, should set every poor citizen so far at his ease, as to be able to work like the rest; and every wealthy citizen in such a mediocrity, as to be obliged to take some pains either in preserving or acquiring a fortune.

It is an excellent law in a trading republic, to make an equal division of the paternal estate among the children. The consequence of this is, that how large soever a fortune the father has made, his children, being not so rich as he, are induced to avoid luxury, and to work as he had done. I speak here only of trading republics, for as to those that have no commerce, the legislator must pursue quite different measures.

THERE were two kinds of republics in Greece: the one military, like Sparta; the other commercial, as Athens. In the former, the citizens were obliged to be idle; in the latter, endeavours were used to excite in them the love of industry and labour. Solon made idleness a crime, and insisted that each citizen should give an account of his manner of getting a livelihood. And indeed, in a well-

§ In these the portions or fortunes of women ought to be very much limited.

regulated democracy, where people's expences should extend only to what is necessary, every one ought to have it; for how should their wants be otherwise supplied?

C H A P. VII.

Other Methods of favouring the Principle of Democracy.

AN equal division of lands cannot be established in all democracies. There are some circumstances in which such a regulation as this would be impracticable, dangerous, and even subversive of the constitution. We are not always obliged to proceed to extremes. If it appears that this division of lands, which was designed to preserve the people's morals, does not suit with the democracy, recourse must be had to other methods.

IF a permanent body be established to serve as a rule and pattern of manners; a senate, to which years, virtue, gravity, and eminent services procure admittance; the senators, by being exposed to public view like the statues of the Gods, must naturally inspire every family with virtuous sentiments.

ABOVE all, this senate must steadily adhere to the ancient institutions, and mind that the people and the magistrates never swerve from them.

WITH regard to manners, the preservation of the ancient customs is a very considerable point. Since a corrupt people seldom perform any memorable actions, seldom establish societies, build cities, or enact laws; on the contrary, since most institutions are derived from people whose manners are plain

and simple; to keep up the ancient customs, is the way to preserve the original purity of morals.

BESIDES, if by some revolution the state has happened to assume a new form, this seldom can be effected without a great deal of pains and trouble, and hardly ever by idle and debauched persons. Even those who had been the instruments of the revolution, were desirous it should be relished, which is difficult to compass without good laws. Hence it is, that ancient institutions for the most part tend to reform the people's manners, and those of modern date to corrupt them. In the course of a long administration, the descent to vice is insensible; but there is no re-ascending to virtue, without making the most generous efforts.

It has been doubted, whether the members of the senate in question ought to be for life, or only chosen for a time. Undoubtedly they ought to be for life, as was the custom at Rome *, at Sparta †, and even at Athens. For we must not confound the senate at Athens, which was a body that changed every three months, with the Areopagus, whose members, as standing patterns, were established for life.

LET this be therefore a general maxim; that in a senate designed to be a rule, and the depositary, as it were, of manners, the members ought to be chosen for life: in a senate intended for the administration of affairs, the members may be changed.

* The magistrates there were annual, and the senators for life.

† Lycurgus, says Xenophon, *de Repub. Lacedem.* ordained, that the senators should be chosen from amongst the old men, in order that they might not be neglected in their latter days; thus by making them judges of the courage of young people, he rendered the old age of the former more honourable than the strength and vigour of the latter.

THE spirit, says Aristotle, waxes old as well as the body. This reflexion holds good only with respect to a single magistrate, but cannot be applied to a senatorian assembly.

AT Athens, beside the Areopagus, there were guardians of the public morals, as well as of the laws *. At Sparta, all the old men were censors. At Rome, the censorship was committed to two particular magistrates. As the senate watched over the people, the censors were to have an eye over the people and the senate. Their office was to reform the corruptions of the republic, to stigmatize indolence, to censure neglects, and to correct mistakes; as to flagrant crimes, these were left to the punishment of the laws.

THAT Roman law, which required the accusations in cases of adultery to be public, was extremely well calculated for preserving the purity of morals; it intimidated married women, as well as those who were to watch over their conduct.

NOTHING contributes more to the preservation of morals, than an extreme subordination of the young to the old. Thus they are both restrained, the former by their respect for those of advanced age, and the latter by their regard for themselves.

NOTHING gives a greater power to the laws, than a perfect subordination between the citizens and the magistrate. *The great difference which Lycurgus established between Sparta and the other cities, says Xenophon †, consists chiefly in the obedience the citizens shew to the law; they run when the magistrate calls them. But at Athens a rich man*

* Even the Areopagus itself was subject to their censure.

† Republic of the Lacedæmonians.

would be highly displeased, to be thought dependent on the magistrate.

PATERNAL authority is likewise of great service towards the preservation of morals. It has been already remarked, that in a republic there is not so coercive a force as in other governments. The laws must therefore endeavour to supply this defect by some means or other; and this is done by paternal authority.

FATHERS at Rome had the power of life and death over their children†. At Sparta, every father had a right to correct another man's child.

PATERNAL authority ended at Rome together with the republic. In monarchies, where such a purity of morals is not required, they are controulled by no other authority than that of the magistrates.

THE Roman laws, which accustomed young people to dependance, established a long minority. Perhaps we are mistaken in conforming to this custom; there is no necessity for so much constraint in monarchies.

THIS very subordination in a republic might make it necessary for the father to continue in the possession of his children's fortune during life, as was customary at Rome. But this is not agreeable to the spirit of monarchy.

† We may see in the Roman history, how useful this power was to the republic. I shall give an instance even in the time of its greatest corruption. Aulus Fulvius was set out on his journey in order to join Catiline; his father called him back, and put him to death. Sallust, *de bello Catil.*

C H A P. VIII.

How the Laws ought to be relative to the Principle of Government in an Aristocracy.

IF the people are virtuous in an aristocracy, they enjoy almost the same happiness as in a popular government, and the state grows powerful. But as a great share of virtue is very rare where men's fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation, and endeavour to re-establish that equality which was necessarily removed by the constitution.

THE spirit of moderation is what we call virtue in an aristocracy; it supplies the place of the spirit of equality in a popular state.

As the pomp and splendor with which kings are environed form a part of their power, so modesty and simplicity of manners constitute the power of an aristocratic nobility*. When they effect no distinction, when they mix with the people, dress like them, and with them share all their pleasures, the people are apt to forget their subjection and weakness.

EVERY government has its nature and principle. An aristocracy must not therefore assume the nature and principle of monarchy; which would be the case, were the nobles to be invested with personal privileges distinct from those of their body; pri-

* In our days the Venetians, who in many respects may be said to have a very wise government, decided a dispute between a noble Venetian and a gentleman of Terra Firma with regard to precedence in a church, by declaring, that out of Venice a noble Venetian had no pre-eminence over any other citizen.

privileges ought to be for the senate, and simple respect for the senators.

IN aristocratical governments there are two principal sources of disorder: excessive inequality between the governors and the governed; and the same inequality between the different members of the body that governs. From these two inequalities, hatreds and jealousies arise, which the laws ought always to prevent or repress:

THE first inequality is chiefly, when the privileges of the nobility are honourable, only as they are ignominious to the people. Such was the law at Rome by which the patricians were prohibited from marrying plebeians*; a law that had no other effect, than to render the patricians on the one side more haughty, and on the other more detestable. The reader may see what advantages the tribunes derived from thence in their harangues.

THIS inequality also occurs, when the condition of the citizens differs with respect to taxes: which may happen four different ways; when the nobles assume the privilege of paying none; when they commit frauds to exempt themselves†; when they engross the public money, under pretence of rewards or appointments for their respective employments; in a word, when they render the common people tributary, and divide among their own body the profits arising from the several subsidies. This last cause very seldom happens; an aristocracy so instituted would be the most intolerable of all governments.

* It was inserted by the decemvirs in the two last tables. See Dionys. Halicarn. l. 10.

† As in some aristocracies in our time; nothing is more prejudicial to the government.

WHILE Rome inclined towards aristocracy, she avoided all these inconveniencies. The magistrates never received any emoluments from their office. The principal men of the republic were taxed like the rest, nay heavier; and sometimes the taxes fell upon them alone. In short, far from sharing among themselves the revenues of the state, all they could draw from the public treasure, and all the wealth that fortune flung into their laps, they bestowed freely on the people, to be excused from accepting public honours†.

It is a fundamental maxim, that largesses are hurtful to the people in a democracy, but salutary in an aristocratical government. The former make them forget they are citizens, the latter bring them to a sense of it.

If the revenues of the state are not distributed among the people, they must be convinced at least of their being well administered: to feast their eyes with the public treasure, is with them the same thing almost as enjoying it. The golden chain displayed at Venice, the riches exhibited at Rome in public triumphs, the treasures preserved in the temple of Saturn, were in reality the wealth of the people.

It is a very essential point in an aristocracy, that the nobles themselves should not levy the taxes. The first order of the state in Rome never concerned themselves with it; the levying of taxes was committed to the second, and even this in process of time was attended with great inconveniencies. In an aristocracy like this, where the nobles levied the taxes, the private people would be all at the

† See in Strabo, l. 14. in what manner the Rhodians behaved in this respect.

discretion of persons in public employments; and there would be no such thing as a superior tribunal to check their power. The members appointed to remove the abuses, would rather enjoy them. The nobles would be like the princes of despotic governments, who confiscate whatever estates they please.

SOON would the profits hence arising be considered as a patrimony, which avarice would enlarge at pleasure. The farms would be lowered, and the public revenues reduced to nothing. This is the reason that some governments, without having ever received any remarkable shock, have dwindled away to such a degree, as not only their neighbours, but even their own subjects, have been amazed at it.

THE laws should also forbid the nobles all kind of commerce: merchants of such unbounded credit would monopolize all to themselves. Commerce is a profession of people who are upon an equality; hence among despotic states the most miserable are those in which the prince applies himself to trade.

THE laws of Venice debar* the nobles from commerce, by which they might even innocently acquire great riches.

THE laws ought to employ the most effectual means for making the nobles do justice to the people. If they have not established a tribune, they ought to be a tribune themselves.

EVERY kind of asylum in opposition to the ex-

* *Amelot de la Houffaye*, of the government of Venice, part 3. The *Gladian* law forbade the senators to have any ship at sea that held above forty bushels. *Lu. l. 2.*

execution of the laws destroys aristocracy, and is soon succeeded by tyranny.

THEY ought always to mortify the lust of dominion. There should be either a temporary or perpetual magistrate to keep the nobles in awe, as the Ephori at Sparta, and the State Inquisitors at Venice, magistrates subject to no formalities. This species of government stands in need of the strongest springs: thus a mouth of stone † is open to every informer at Venice, a mouth to which one would be apt to give the appellation of tyranny.

THESE arbitrary magistrates in an aristocracy bear some analogy to the censorship in democracies, which of its own nature is equally independent. And, indeed, the censors ought to be subject to no inquiry in relation to their conduct during their office; they should meet with a thorough confidence, and never be discouraged. In this respect the practice of the Romans deserved to be admired; magistrates of all denominations were accountable for their administration *, except the censors.

THERE are two very pernicious things in an aristocracy; excess either of poverty, or of wealth, in the nobility. To prevent their poverty, it is necessary, above all things, to oblige them to pay their debts in time. To moderate the excess of wealth, prudent and gradual regulations should be made; but no confiscations, no agrarian laws, no expung-

† The informers throw their scrolls into it.

* See *Livy*, l. 49. A censor could not be troubled even by a censor; each made his remark without taking the opinion of his colleague, and when it otherwise happened, the censorship was in a manner abolished.

§ At Athens the *Logistæ*, who made all the magistrates accountable for their conduct, gave no account themselves.

ing of debts; these are productive of great calamities.

THE laws ought to abolish the right of primogeniture among the nobles †, so that by a continual division of the inheritances, their fortunes may be always upon a level.

THERE should be no substitutions, no powers of redemption, no rights of *Majorazgo*, or adoption. The contrivances for perpetuating the grandeur of families in monarchical governments ought never to be made use of in aristocracies.

WHEN the laws have compassed the equality of families, the next thing is to preserve a proper harmony and union amongst them. The quarrels of the nobility ought to be quickly decided; otherwise the contests of individuals become those of families. Arbiters may terminate, or even prevent the rise of disputes.

IN a word, the laws must not favour the distinctions raised by vanity among families, under pretence that they are more noble or ancient than others; pretences of this kind ought to be ranked among the weaknesses of private persons.

WE have only to cast an eye on Sparta; there we may see how the Ephori contrived to check the foibles of the kings, as well as those of the nobility and commonalty.

† It is so practised at Venice, *Amelot de la Houffaye*, p. 30, and 31.

§ The principal design of some aristocracies seems to be less the support of the state than of their nobility.

C H A P. IX.

In what manner the Laws are relative to their Principle in Monarchies.

HONOUR being the principle of a monarchical government, the laws ought to be relative to this principle.

THEY should endeavour to support the nobility, in respect to whom honour may be, in some measure, deemed both child and parent.

THEY should render the nobility hereditary, not as a boundary between the power of the prince and the weakness of the people, but as the link which connects them both.

SUBSTITUTIONS which preserve the estates of families undivided are very useful in this government, though not so proper in others.

HERE the power of redemption is of service, as it restores to noble families the lands that had been alienated by the prodigality of a parent.

THE lands of the nobility ought to have privileges as well as their persons. The sovereign's dignity is inseparable from that of his kingdom; and the dignity of the nobleman from that of his fief.

ALL these privileges must be particular to the nobility, and incommunicable to the people, unless we intend to act contrary to the principle of government, and to lessen the power of the nobles together with that of the people.

SUBSTITUTIONS are a restraint to commerce; the power of redemption produces a vast number of processes; every estate in land that is sold throughout the kingdom, is in some measure without an

owner for the space of a year. Privileges annexed to fiefs give a power very burthensome to those governments which tolerate them. These are the inconveniencies of nobility; inconveniencies however that disappear when confronted with its general utility: but when these privileges are communicated to the people, every principle of government is wantonly violated.

IN monarchies a person may leave the bulk of his estate to one of his children; a permission improper in any other government.

THE laws ought to favour all sorts of commerce & consistent with the constitution, in order that the subjects may, without ruining themselves, be able to satisfy the continual cravings of the prince and his court.

THEY should establish some regulation, that the manner of collecting the taxes may not be more burthensome than the taxes themselves.

THE weight of duties produces labour, labour weariness, and weariness the spirit of laziness and sloth.

CHAP. X.

Of the Expedition peculiar to the executive Power in Monarchies.

THE advantage which a monarchical government has over a republic is very great: as the state is conducted by a single person, the executive power is thereby enabled to act with greater expedition. But as this expedition may degene-

It is tolerated only in the common people. See the third law. Cod. de Comm. & Mercatoribus, which is full of good sense.

rate into rapidity, the laws should use some contrivance to slacken it. They ought not only to favour the nature of each constitution, but likewise to remedy the abuses that might result from this very nature.

CARDINAL Richelieu † advises sovereigns to permit no such thing as societies or communities that raise difficulties upon every trifle. If this man's heart had not been bewitched with the love of despotic power, still these arbitrary notions would have filled his head.

THE bodies intrusted with the depositum of the laws are never more obedient than when they proceed slowly, and use that reflexion in the monarch's affairs, which can hardly be expected from the ignorance of a court, or from the precipitation of its councils §.

WHAT would have become of the finest monarchy that ever was, if the magistrates, by their delays, their complaints, and entreaties, had not checked the rapidity even of their princes virtues, when these princes, consulting only the generous impulse of their minds, would fain have given a boundless reward to services performed with an unlimited courage and fidelity?

CH A P. XI.

Of the Excellence of a monarchical Government.

MONARCHICAL government has a great advantage over a despotic government. As

† Testam. po lit.

§ *Barbaris cunctatio servilis, statim exequi regium videtur.* Tact. Annal. l. 5.

it naturally requires there should be several orders or ranks of subjects, the state is more permanent, the constitution more steady, and the person of him who governs more secure.

IT was the opinion of Cicero §, that the establishing of the tribunes preserved the republic. "*And indeed, says he, the violence of a heedless people is more terrible. A chief or head is sensible that the affair depends upon himself, and therefore he thinks; but the people in their impetuosity are ignorant of the danger into which they hurry themselves.*" This reflexion may be applied to a despotic government, which is a people without tribunes; and to a monarchy, where the people have some kind of tribunes.

ACCORDINGLY it is observable, that in the commotions of a despotic government, the people, hurried away by their passions, are apt to push things as far as they can go. The disorders they commit are all extreme; whereas in monarchies matters are very rarely carried to excess. The chiefs are apprehensive on their own account; they are afraid of being abandoned; and the intermediate dependent powers † do not chuse that the populace should have too much the upper hand. It seldom happens that the states of the kingdom are intirely corrupted; the monarch adheres to these; and the seditious, who have neither will nor hopes to subvert the government, have neither power nor will to dethrone the prince.

IN these circumstances men of prudence and authority interfere; moderate measures are first proposed, then complied with, and things at length

§ Lib. 3d. de Leg.

† See the first note of book 2. ch. 4.

are redressed; the laws resume their vigour, and command submission.

THUS all our histories are full of civil wars without revolutions, while the histories of despotic governments abound with revolutions without civil wars.

THE writers of the history of the civil wars of some countries, even those who fomented them, sufficiently shew the little foundation princes have to suspect the authority with which they invest particular bodies of men; since, even under the unhappy circumstance of their errors, they sighed only after the laws and their duty; and restrained, more than they were capable of inflaming, the impetuosity of the revolted *.

CARDINAL Richelieu, reflecting perhaps that he had too much reduced the states of the kingdom, has recourse to the virtue of the prince and of his ministers for the support § of government: but he requires so many things, that indeed there is none but an angel capable of such attention, such resolution, and knowledge; and scarce can we flatter ourselves ever to see such a prince and ministers, no not while monarchy subsists.

As people, who live under a good government, are happier than those, who without rule or leaders wander about the forests; so sovereigns, who live under the fundamental laws of their country, are far happier than despotic princes, who have nothing to regulate either their own passions, or those of their subjects.

* Memoirs of Cardinal de Retz and other histories.

§ Testam. polit.

CHAP. XII.

The same subject continued.

LET us not look for magnanimity in despotic governments; the prince cannot impart a greatness which he has not himself: with him there is no such thing as glory.

It is in monarchies we see the subjects encircling the throne, and cheered by the irradiancy of the monarch; there it is that each person filling, as it were, a large space, is capable of exercising those virtues which adorn the soul, not with independence, but with real dignity and greatness.

CHAP. XIII.

An Idea of despotic Power.

WHEN the savages of Louisiana are desirous of fruit, they cut the tree at the root, and gather the fruit *. This is an emblem of despotic government.

CHAP. XIV.

In what manner the Laws are relative to the Principles of despotic Government.

THE principle of despotic government is fear; but a timid, ignorant, and faint-spirited people have no need for a great number of laws.

EVERY thing ought to depend here on two or three ideas: hence there is no necessity that any new

* Edifying letters, 11. coll. p. 315.

notions should be added. When we want to break a horse, we take care not to let him change his master, his lesson, or his pace. Thus an impression is made on his brain by two or three motions, and no more.

If a prince is shut up in a seraglio, he cannot leave his voluptuous abode without alarming those who keep him confined. They will bear that his person and power should pass into other hands. He seldom therefore wages war in person, and hardly ventures to intrust the command to his generals.

A PRINCE like this, unaccustomed to resistance in his palace, is enraged to see his will opposed by armed force; hence he is generally governed by wrath or vengeance. Besides, he can have no notion of real glory. War therefore is carried on under such a government in its full natural fury, and less extent is given to the law of nations than in other states.

SUCH a prince has so many imperfections, that they are afraid to expose his natural stupidity to public view. He is concealed in his palace, and the people are ignorant of his situation. It is lucky for him, that the inhabitants of those countries need only the name of a sovereign to govern them.

WHEN Charles XII. was at Bender, he met with some opposition from the senate of Sweden; upon which he wrote word home, that he would send one of his boots to command them. This boot would have governed like a despotic prince.

If the prince is a prisoner, he is supposed to be dead, and another ascends the throne. The treaties made by the prisoner are void, his successor will not ratify them: and indeed, as he is the law, the state, and the prince; when he is no longer a prince, he

is nothing: were he not therefore deemed to be deceased, the state would be subverted.

ONE thing which chiefly determined the Turks to conclude a separate peace with Peter I. was the Muscovites telling the Vizir, that in Sweden another prince had been set upon the throne.

THE preservation of the state is only the preservation of the prince, or rather of the palace where he is confined. Whatever does not directly menace this palace or the capital, makes no impression on ignorant, proud, and prejudiced minds; and as for the concatenation of events, they are unable to trace, to foresee, or even to conceive it. Politics, with its several springs and laws, must here be very much limited; the political government is as simple as the civil †.

THE whole is reduced to reconciling the political and civil administration to the domestic government, the officers of state to those of the seraglio.

SUCH a state is happiest, when it can look upon itself as the only one in the world, when it is surrounded with deserts, and separated from those people whom they call Barbarians. Since it cannot depend on the militia, it is proper it should destroy a part of itself.

As fear is the principle of despotic government, its end is tranquillity: but this tranquillity cannot be called a peace; no, it is only the silence of those towns which the enemy is ready to invade.

SINCE the strength does not lie in the state, but

* Continuation of Puffendorf's introduction to the history of Europe, in the article of Sweden, ch. 10.

† According to Sir John Chardin, there is no council of state in Persia.

in the army that founded it; in order to defend the state, the army must be preserved, how formidable soever the prince. How then can we reconcile the security of the government to that of the prince's person?

OBSERVE with what industry the Russian government endeavours to temper its arbitrary power, which it finds more burthensome than the people themselves. They have broke their numerous guards, mitigated criminal punishments, erected tribunals, entered into a knowledge of the laws, and instructed the people. But there are particular causes that will probably once more involve them in the very misery which they now endeavour to shun.

IN those states, religion has more influence than any where else; it is fear added to fear. In Mahometan countries, it is partly from their religion that the people derive the amazing veneration they have for their monarch.

IT is religion that amends in some measure the Turkish constitution. The subjects, who have no attachment of honour to the glory and grandeur of the state, are connected with it by the force and principle of religion.

OF all despotic governments, there is none that labours more under its own weight, than that wherein the prince declares himself proprietor of all the lands, and heir to all his subjects. Hence the neglect of agriculture arises; and if the prince intermeddles likewise in trade, all kind of industry is ruined.

UNDER this species of government, nothing is repaired or improved *. Houses are built only for

* See Ricaut, State of the Ottoman Empire, p. 196.

the necessity of habitation; there is no digging of ditches, or planting of trees; every thing is drawn from, but nothing restored to the earth; the ground lies untilled, and the whole country becomes a desert.

Is it to be imagined, that the laws which abolish the property of land, and the succession of estates, will diminish the avarice and cupidity of the great? By no means. They will rather stimulate this cupidity and avarice. The great men will be prompted to use a thousand oppressive methods, imagining they have no other property than the gold and silver which they are able to seize upon by violence, or to conceal.

To prevent therefore the total destruction of the state, the avidity of the prince ought to be moderated by some established custom. Thus, in Turkey, the prince is satisfied with the right of three per cent. on the value of inheritances. But as he gives the greatest part of the lands to his soldiery, and disposes of them as he pleases; as he seizes on all the inheritances of the officers of the empire at their death; as he has the property of the possessions of those who die without issue, and the daughters have only the usufruct; it thence follows, that the most part of the estates of the country are held in a precarious manner.

By the laws of *Bantam* †, the king seizes on the whole inheritance, even wife, children and habita-

¶ See concerning the inheritances of the Turks, *Ancient and modern Sparta*. See also Rieuat on the Ottoman empire.

† Collection of Voyages that contributed to the establishment of the East-India company, tom. 1. The law of *Pegu* is less cruel; if there happens to be children, the king succeeds only to two-thirds. Ibid, tom. 3. p. 1.

tion. In order to elude the cruellest part of this law, they are obliged to marry their children at eight, nine, or ten years of age, and sometimes younger, to the end that they may not be a miserable part of the father's succession.

In countries, where there are no fundamental laws, the succession to the empire cannot be fixt. The crown is then elective, and the right of electing is in the prince, who names a successor either of his own or of some other family. It would be in vain to establish here the succession of the eldest son; the prince might always chuse another. The successor is declared by the prince himself, or by a civil war. Hence a despotic state is, upon another account, more liable than a monarchical government to dissolution.

As every prince of the royal family is held equally capable of being chosen, hence it follows, that the prince who ascends the throne immediately strangles his brother, as in Turkey; or puts out their eyes, as in Persia; or bereaves them of their understanding, as in the Mogul's country; or if these precautions are not used, as in Morocco, the vacancy of the throne is always attended with the horrors of a civil war.

By the constitutions of Russia §, the Czar may chuse whom he has a mind for his successor, whether of his own or of a strange family. Such a settlement produces a thousand revolutions, and renders the throne as tottering as the succession is arbitrary. The right of succession being one of those things which are of most importance to the people to know, the best is that which most sensibly strikes them, such as a certain order of birth.

§ See the different constitutions, particularly that of 1722.

A settlement like this puts a stop to intrigues, and stifles ambition; the mind of a weak prince is no longer enslaved, nor is he made to speak his will as he is just expiring.

WHEN the succession is established by a fundamental law, only one prince is the successor, and his brothers have neither a real nor apparent right to dispute the crown with him. They can neither pretend to, nor take any advantage of the will of a father. There is then no more occasion to confine or kill the king's brother, than any other subject.

BUT in despotic governments, where the prince's brothers are equally his slaves and his rivals, prudence requires that their persons be secured; particularly in Mahometan countries, where religion considers victory or success as a divine decision in their favour; so that they have no such thing as a monarch *de jure*, but only *de facto*.

THERE is a far greater incentive to ambition in countries, where the princes of the blood are sensible, that if they do not ascend the throne, they must be either imprisoned or put to death, than amongst us, where they are placed in such a station, as may satisfy, if not their ambition, at least their moderate desires.

THE princes of despotic governments have always perverted the use of marriage. They generally take a great number of wives, especially in that part of the world where absolute power is in some measure naturalized, namely, Asia. Hence they come to have such a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

THE reigning family resembles the state; it is

too weak itself, and its head too powerful; it seems very numerous and extensive, and yet is suddenly extinct. *Artaxerxes* † killed all his children for conspiring against him. It is not at all probable that fifty children should conspire against their father, and much less that this conspiracy should be owing to his having refused to resign his concubine to his eldest son. It is more natural to believe, that the whole was an intent of those oriental seraglios, where fraud, treachery and deceit reign in silence and darkness; and where an old prince, grown every day more infirm, is the first prisoner of the palace.

AFTER what has been said, one would imagine that human nature should perpetually rise up against despotism. But notwithstanding the love of liberty, so natural to men, notwithstanding their innate detestation of force and violence, most nations are subject to this very government. This is easily accounted for. To form a moderate government, it is necessary to combine the several powers; to regulate, temper, and set them in motion; to give, as it were, ballast to one, in order to enable it to counterpoise the other. This is a master-piece of legislation, seldom produced by hazard, and rarely attained by prudence. On the contrary, a despotic government offers itself, as it were, at first sight; it is uniform throughout; and as passions only are requisite to establish it, this is, what every capacity may reach.

† See *Justin*.

The reigning family resembles the slave; it is

C H A P. XV.

The same Subject continued.

IN warm climates, where despotic power for the most part prevails, the passions disclose themselves earlier, and are sooner extinguished †; the understanding is sooner ripened; they are less in danger of squandering away their fortunes; there is less facility of distinguishing themselves in the world; less communication between young people, who are confined at home; they marry much earlier, and consequently may be sooner of age, than in our European climates. In Turkey they are of age at fifteen.*.

THEY have no such thing as a cession of goods; in a government where there is no fixed property, people depend rather on the person than on his estate.

THE cession of goods is naturally admitted in moderate governments †, but particularly in republics, because of the greater confidence usually placed in the probity of the citizens, and the lenity and moderation arising from a form of government, which every subject seems to have preferred to all others.

HAD the legislators of the Roman republic established the cession of goods ¶, they never would

† See the book of laws, as relative to the nature of the climate.

* *Laguetiere*, ancient and modern Sparta, p. 463.

† The same may be said of compositions in regard to fair bankrupts.

¶ There was no such establishment made till the Julian law, *De cessione bonorum*, which preserved them from prison, and from an ignominious division of their goods.

have been exposed to so many seditions and civil discords; neither would they have experienced the danger of the evils, nor the inconveniency of the remedies.

POVERTY and the precariousness of property in a despotic state make usury natural, each person raising the value of his money in proportion to the danger he sees in lending it. Misery therefore pours in from all parts into those wretched countries; they are bereft of every thing, even of the resource of borrowing.

HENCE it is, that a merchant under this government is unable to carry on an extensive commerce; he lives from hand to mouth; and were he to encumber himself with a large quantity of merchandises, he would lose more by the exorbitant interest he must give for money, than he could possibly get by the goods. Hence they have no laws here relating to commerce, they are all reduced to what is called the bare police.

A GOVERNMENT cannot be unjust, without having hands to exercise its injustice. Now it is impossible but these hands will be grasping for themselves. The embezzling of the public money is therefore natural in despotic states.

As this is a common crime under such a government, confiscations are very useful. By these the people are eased; the money drawn by this method being a considerable tribute, which could hardly be raised on the exhausted subject: neither is there in those countries any one family which the prince would be glad to preserve.

IT is quite different in moderate governments. Confiscations would render property uncertain, would strip innocent children, would destroy a

whole family, instead of punishing a single criminal. In republics they would be attended with the mischief of subverting equality, which is the very soul of this government, by depriving a citizen of his necessary subsistence¶.

THERE is a Roman law * against confiscations, except in the case of high treason of the most heinous nature. It would be a prudent thing to follow the spirit of this law, and to limit confiscations to particular crimes. In countries where a local custom has rendered real estates alienable, Bodin very justly remarks, that confiscations should extend only to such as are purchased or acquired †.

C H A P. XVI.

Of the Communication of Power.

IN a despotic government the power is communicated entire to the person entrusted with it. The vizir himself is the despotic prince; and each particular officer is the vizir. In monarchies the power is less immediately applied; being tempered by the sovereign as he gives it †. He makes such a distribution of his authority, as never to communicate a part of it, without reserving a greater share to himself.

HENCE in monarchies the governors of towns are not so dependent on the governor of the pro-

¶ They seem to have been too fond of confiscations in the republic of Athens.

* *Authentica bona damnatorum* Cod. de bon. damn.

† B ok 5. ch. 3.

† *Ut esse Phœbi dulcius lumen solet*

Jamjam cadentis————

vince, as not to be still more so on the prince; and the private officers of military bodies are not so far subject to their general, as not to owe still a greater subjection to their sovereign.

IN most monarchies, it has been wisely regulated, that those who have an extensive command should not belong to any military corps; so that as they have no authority but through the monarch's pleasure, and as they may be employed or not, they are in some measure in the service, and in some measure out of it.

THIS is incompatible with a despotic government. For if those who are not actually employed were still invested with privileges and titles, the consequence must be, that there would be a kind of men in the state, who might be said to be great of themselves; a thing quite contrary to the nature of this government.

WERE the governor of a town independent of the bashaw, expedients would be daily necessary to make them agree; which is highly absurd in a despotic state. Besides, if a particular governor might refuse to obey, how could the other answer for his province with his head?

IN this kind of government, authority must always be wavering; nor is that of the lowest magistrate more steady than that of the despotic prince. Under moderate governments, the law is prudent in all its parts, and perfectly well known, so that even the pettiest magistrates are capable of following it. But in a despotic state, where the prince's will is the law, though the prince were wise, yet how could the magistrate follow a will he does not know? He must certainly follow his own.

AGAIN, as the law is only the prince's will, and

as the prince can only will what he knows, the consequence is, that there are an infinite number of people who must will for him, and make their wills keep pace with his.

In short, as the law is the momentary will of the prince, it is necessary that those who will for him should follow his subitaneous way of willing.

C H A P. XVII.

Of Presents.

IT is a custom in despotic countries, never to address any superior whomsoever, not excepting their kings, without making them a present. The Mogul § never receives the petitions of his subjects, if they come with empty hands. These princes spoil even their own favours.

It must always be thus in a government where no man is a citizen; where they have all a notion that a superior is under no obligation to an inferior; where men imagine themselves bound by no other tie than the chastisements inflicted by one party over another; in a word, where there is very little to do, and where the people have seldom an occasion of presenting themselves before the great, of offering their petitions, and much less their complaints.

In a republic, presents are odious, because virtue stands in no need of them. In monarchies, honour is a much stronger incentive than presents. But in a despotic government, where there is nei-

§ Collection of voyages that contributed to the establishment of the East-India company, t. m. r. p. 80.

then honour nor virtue, people cannot be determined to act but through hope of the conveniencies of life.

IT is in conformity to republican ideas, that Plato † commanded those who received presents for doing their duty to be punished with death. *They must not take presents, says he, neither for good nor for evil actions.*

A VERY bad law that was among the Romans †, which gave the magistrates leave to accept of small presents *, provided they did not exceed one hundred crowns the whole year. They who receive nothing, expect nothing; they who receive a little, soon covet more, till at length their desires swell to an exorbitant height. Besides, it is much easier to convict a man, who knows himself obliged to accept of no present at all, and yet will accept of something, than a person who takes more when he ought to take less, and who always finds pretexts, excuses, and plausible reasons, in justification of his conduct.

C H A P. XVIII.

Of Rewards conferred by the Sovereign.

IN despotic governments, where, as has been already remarked, the principal motive of action is the hope of the conveniencies of life, the prince who confers rewards has nothing to bestow but money. In monarchies, where honour alone predominates, the prince's rewards would consist only of marks of distinction, if the distinctions establish-

† Book 12. of Laws.

† Leg. 5. § ad leg. jul. repet.

* Munuscula.

ed by honour were not attended with luxury, which necessarily brings on its wants: the prince therefore is obliged to confer such honours as lead to wealth. But in a republic where virtue reigns, a motive self-sufficient, and which excludes all others, the recompences of the state consist only of public attestations of this virtue.

IT is a general rule, that great rewards in monarchies and republics are a sign of their decline; because they are a proof of their principles being corrupted, and that the idea of honour has no longer the same force in monarchy, nor the title of citizen the same weight in a republic.

THE very worst Roman emperors were those who were most profuse in their largesses; for instance, *Caligula, Claudius, Nero, Otho, Vitellius, Commodus, Heliogabalus, and Caracalla*. The best, as *Augustus, Vespasian, Antoninus Pius, Marcus Aurelius, and Pertinax*, were oeconomists. Under good emperors the state resumed its principles; all other treasures were supplied by that of honour.

C H A P. XIX.

New Consequences of the Principles of the three Governments.

I CANNOT conclude this book without making some applications of my three principles.

QUESTION I. It is a question, whether the laws ought to oblige a subject to accept of a public employment? My opinion is, that they ought in a republic, but not in a monarchical government. In the former, public employments are attestations of virtue, depositories with which a citizen is intrusted

by his country, for whose sake alone he ought to live, to act, and to think; consequently he cannot refuse them †. In the latter, public offices are testimonies of honour; now such is the capriciousness of honour, that it chuses to accept of none of these testimonies, but when and in what manner it pleases.

THE late king of Sardinia inflicted punishments § on his subjects who refused the dignities and public offices of the state. In this he unknowingly followed republican ideas: but his manner of governing in other respects fully proves that this was not his intention.

QUESTION II. Secondly, it is questioned whether a subject should be obliged to accept of a post in the army inferior to that which he held before? Among the Romans it was customary to see a captain serve the next year under his lieutenant*. This is because virtue in republics requires a continual sacrifice of our persons and of our repugnancies for the good of the state. But in monarchies, honour, true or false, will never bear with what it calls degrading itself.

IN despotic governments, where honour, posts and ranks are equally abused, they indiscriminately

† Plato, in his Republic, book viii. ranks the refusals among the marks of the corruption of a republic. In his Laws, book vi. he orders them to be punished by a fine; at Venice they are punished with banishment.

§ Victor Amadeus.

* Some centurions having appealed to the people for the employments which they had before enjoyed, "It is just, my comrades," said a centurion, "that you should look upon every post as honourable in which you have an opportunity of defending the republic."
Liv. Dec. 5. lib. xlii.

make of a prince a scullion, and of a scullion a prince.

QUESTION III. Thirdly, it may be enquired, whether civil and military employments should be conferred on the same person? In republics, I think, they should be joined, but in monarchies separated. In the former, it would be very dangerous to make the profession of arms a particular state, distinct from that of civil functions; and in the latter, no less dangerous would it be to confer these two employments on the same person.

In republics, a person takes up arms only with a view to defend his country and its laws; it is because he is a citizen he makes himself for a while a soldier. Were these two distinct states, the person who under arms thinks himself a citizen would soon be made sensible he is only a soldier.

In monarchies, they whose condition engages them in the profession of arms have nothing but glory, or at least honour or fortune, in view. To men therefore like these the prince should never give any civil employments; on the contrary, they ought to be checked by the civil magistrate, that the same persons may not have at the same time the confidence of the people and the power to abuse it.

WE have only to cast an eye on a nation that may be justly called a republic disguised under the form of monarchy, and we shall see how jealous they are of making a separate order of the profession of arms, and how the military state is always allied with that of the citizen, and even sometimes

§ Ne imperium ad optimos nobilium transferretur, Senatum militia vetuit Gallienus, etiam adire exercitum. *Aurelius Victor, de viris illustribus.*

of the magistrate, in order that these qualities may be a pledge for their country, which should never be forgotten.

THE division of civil and military employments, made by the Romans after the extinction of the republic, was not an arbitrary thing. It was a consequence of the change which happened in the constitution of Rome; it was natural to a monarchical government; and what was only begun under Augustus ¶, succeeding emperors† were obliged to finish, in order to temper the military government.

PROCOPIUS therefore, the competitor of Valens the emperor, was very much to blame, when conferring the proconsular dignity * upon Hormisdas, a prince of the blood royal of Persia, he restored to this magistracy the military command of which it had been formerly possessed; unless indeed he had very particular reasons for so doing. A person that aspires to the sovereignty concerns himself less about what is serviceable to the state, than what is likely to promote his own interest.

QUESTION IV. Fourthly, it is a question, whether public employments should be sold? They ought not, I think, in despotic governments, where the subjects must be instantaneously placed or displaced by the prince.

BUT in monarchies this custom is not at all improper, by reason it is an inducement to engage in that as a family employment, which would not be undertaken through a motive of virtue; it also fixes every one to his duty, and renders the several or-

¶ Augustus deprived the senators, proconsuls, and governors of the privilege of wearing arms. Dio .l. 33.

+ Constantine. See Zozimus, lib. 2.

* Ammianus Marcellinus, lib. 26. *More veterum & bella restituro,*

ders of the kingdom more permanent. Suidas * very justly remarks, that Anastasius had changed the empire into a kind of aristocracy, by selling all public employments.

PLATO § cannot bear with this prostitution: *This is exactly*, says he, *as if a person were to be made a mariner or pilot of a ship for his money. Is it possible that this rule should be bad in every other employment of life, and hold good only in the administration of a republic?* But Plato talks of a republic founded on virtue, and we of a monarchy. Now in monarchies (where, though there were no such thing as a regular sale of public offices, still the indigence and avidity of the courtier would equally prompt him to expose them to sale) chance will furnish better subjects than the prince's choice. In fine, the method of attaining to honours through riches inspires and cherishes industry ¶, a thing very much wanting in this sort of government.

QUESTION V. The fifth question is, in what sort of government Censors are necessary? My answer is, that they are necessary in a republic, where the principle of government is virtue. We must not imagine that criminal actions only are destructive of virtue; it is destroyed also by omissions, by neglects, by a certain coolness in the love of our country, by bad examples, and by the seeds of corruption: whatever does not openly violate, but elude the laws; does not subvert, but weaken them;

* Fragments taken from the embassies of Constantine Porphyrogenitus.

§ *Repub. lib 8.*

¶ We see the laziness of Spain, where all public employments are given away.

ought to fall under the enquiry and correction of the Censors.

WE are amazed at the punishment of the Areopagite, for killing a sparrow, which, to escape the pursuit of a hawk, had taken shelter in his bosom. We are also amazed, that an Areopagite should put his son to death for pulling out the eyes of a little bird. But let us reflect, that the question here does not relate to a criminal sentence, but to a judgment concerning manners in a republic founded on manners.

THERE shoul' be no Censors in monarchies; the former are founded on honour, and the nature of honour is to have the whole world for its Censor. Every man who fails in this article, is subject to the reproaches even of those who are void of honour.

HERE the Censors would be spoilt by the very people whom they ought to correct: they could not prevail against the corruption of a monarchy; the corruption rather would be too powerful against them.

HENCE it is obvious, that in despotic governments there ought to be no Censors. The example of China seems to derogate from this rule; but we shall see, in the course of this work, the particular reasons of that institution.



B O O K VI.

Consequences of the Principles of different Governments with respect to the simplicity of civil and criminal Laws, the Form of Judgments, and the inflicting of Punishments.

C H A P. I.

Of the Simplicity of civil Laws in different Governments.

SUCH a simplicity of laws is not so much allowed in monarchies as in despotic governments. For in monarchies there must be courts of judicature; these must give their decisions; the decisions must be preserved and learnt, that we may judge in the same manner to-day as yesterday, and that the lives and property of the citizens may be as certain and fixt as the very constitution of the state.

IN monarchies, the administration of justice, which decides not only in whatever belongs to life and property, but also to honour, demands very scrupulous enquiries. The delicacy of the judge increases in proportion to the increase of his trust, and of the importance of the interests on which he determines.

WE must not therefore be amazed to find so many rules, restrictions, and extensions in the laws of

those countries; rules that multiply the particular cases, and seem to make an art of reason itself.

THE difference of rank, birth and condition, established in monarchical governments, is often attended with distinctions in the nature of property; and the laws relative to the constitution of this government may increase the number of these distinctions. Hence among us, goods are divided into real estates, purchases, dowries, paraphernalia, paternal and maternal inheritances; moveables of different kinds; estates held in fee simple, or in tail; acquired by descent or conveyance; allodial, or held by foccage; ground rents, or annuities. Each kind of goods is subject to particular rules, which must be complied with in the disposal of them. These things must necessarily diminish the simplicity of the laws.

IN our governments, the fiefs are become hereditary. It was necessary that the nobility should have a fixt property, that is, the fief should have a certain consistency, in order that the proprietor might be always in a capacity of serving the prince. This must have been productive of great varieties; for example, there are countries where fiefs could not be divided among the brothers; in others, the younger brothers may be allowed a more generous subsistence.

THE sovereign who knows each of his provinces, may establish different laws, or tolerate different customs. But as the despotic prince knows nothing, and can attend to nothing, he must take general measures, and govern by a rigid and inflexible will, which throughout his whole kingdom produces the same effect; in fine, every thing bends under his feet.

IN proportion as the decisions of the courts of judicature are multiplied in monarchies, the law is loaded with decrees that sometimes contradict one another; either because succeeding judges are of a different way of thinking, or because the same causes are sometimes well, and at other times ill defended; or, in short, by reason of a vast number of abuses, to which all human regulations are liable. This is a necessary evil, which the legislator redresses from time to time, as contrary even to the spirit of moderate governments. For when people are obliged to have recourse to courts of judicature, this should come from the nature of the constitution and not from the contradiction or uncertainty of the law.

IN governments where there are necessary distinctions of persons, there must likewise be privileges. This also diminishes the simplicity, and creates numberless exceptions.

ONE of the privileges least burthensome to society, and particularly to him who confers it, is that of pleading in one court preferably to another. Here new difficulties arise, when it becomes a question, before which court we shall plead.

THE case of people under despotic governments is quite different. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the monarch, it follows, that there are scarce any civil laws in regard to landed property. From the right the prince has to successions, it follows likewise that there are none relating to inheritances. The monopolies established by the sovereign for himself in some countries, render all kinds of commercial laws quite useless. The marriages which they

commonly contract with female slaves, are the cause that there are scarce any civil laws relating to dowries, or to the particular advantage of married women. From the large number of slaves it follows, also, that there are very few who have any such thing as a will of their own, and of course are answerable for their conduct before a judge. Most moral actions, that are only in consequence of a father's a husband's, or a master's will, are regulated by them, and not by the magistrates.

I FORGOT to observe, that as what we call honour is a thing almost quite unknown in those countries, the several difficulties relating to this article, though of such importance with us, are with them quite out of the question. Despotism is self-sufficient; round it there is an absolute vacuum. Hence it is, that when travellers favour us with the description of countries where arbitrary sway prevails, they seldom make mention of civil laws*.

ALL occasions therefore of wrangling and lawsuits are here removed. And to this in part it is owing that litigious people in those countries are so roughly handled: as the injustice of their demand is neither screened, palliated nor protected by an infinite number of laws, consequently it is immediately discovered.

* In *Mazulipatan* it could never be found out that there was such a thing as a written law. See the *Collection of voyages that contributed to the establishment of the India company*. Tom. IV. Part I. p. 391. The Indians are regulated in their decisions by certain customs. The *Vedan* and such like books do not contain civil laws, but religious precepts. See *Lettres* ed. 14. collect.

CHAP. II.

Of the Simplicity of criminal Laws in different Governments.

WE hear it generally said, that justice ought to be administered with us as in Turkey. Is it possible then that the most ignorant of all nations should be the most clear-sighted in a point which it most behoves mankind to know?

If we examine the set forms of justice with regard to the trouble the subject undergoes in recovering his property, or in obtaining satisfaction for an injury or affront, we shall undoubtedly find them too numerous: but if we consider them in the relation they bear to the liberty and security of every individual, we shall frequently find them too few; and be convinced that the trouble, expence, delays, and even the very dangers of our judiciary proceedings, are the price that each subject pays for his liberty.

IN Turkey, where the honour, life, or estate of the subject are little regarded, all causes are speedily decided. The method of determining them is a matter of indifference, provided they be determined. The bashaw, after a quick hearing, orders which party he pleases to be bastinadoed, and then sends them about their business.

HERE it would be dangerous to be of a litigious disposition; this supposes a strong desire of obtaining justice, a settled aversion, an active mind, and a steadiness in pursuing one's point. All this should be avoided in a government, where fear ought to be the sole prevailing sentiment, and in

which popular disturbances are frequently attended with sudden and unforeseen revolutions. Here every man ought to know that the magistrate must not hear his name mentioned, and that his security depends wholly on his being reduced to a kind of annihilation.

BUT in moderate governments, where the life of the meanest subject is deemed precious, no man is stript of his honour or property but after a long enquiry; and no man is bereft of life, till his very country has attacked him; an attack that is never made without leaving him all possible means of making his defence.

HENCE it is, that when a person renders himself absolute*, he immediately thinks of reducing the number of laws. In a government thus constituted, they are more affected with particular inconveniencies, than with the liberty of the subject, which is very little minded.

IN republics, it is plain, that as many formalities at least are necessary as in monarchies. In both governments they increase in proportion to the value which is set on the honour, fortune, liberty and life of the subject.

MEN are all equal in republican governments; they are also equal in despotic governments: in the former, because they are every thing; in the latter, because they are nothing.

* Caesar, Cromwell, and several others.

C H A P. III.

In what Governments and in what Cases the Judges ought to determine according to the express Letter of the Law.

THE nearer a government approaches towards a republic, the more the manner of judging becomes settled and fixt; hence it was a fault in the republic of Lacedæmon, for the Ephori to pass such arbitrary judgments, without having any laws to direct them. The first consuls at Rome pronounced sentence in the same manner as the Ephori; but the inconveniency of this proceeding was soon felt, and they were obliged to have recourse to express and determinate laws.

THERE are no laws in despotic governments; the judge himself is his own rule. There are laws in monarchies; and where these are explicit, the judge conforms to them: where they are otherwise, he endeavours to investigate their spirit. In republics, the very nature of the constitution requires the judges to follow the letter of the law: otherwise the law might be explained to the prejudice of every citizen, in cases where their honour, property or life are concerned.

AT Rome the judges had no more to do than to declare, that the person accused was guilty of a particular crime, and then the punishment was found in the laws, as may be seen in several laws still extant. In England the jury give their verdict whether the fact brought under their cognizance be proved or not; if it be proved, the judge pronounces

the punishment inflicted by the law, and for this he need only open his eyes.

CHAP. IV.

Of the manner of passing Judgment.

HENCE arise the various manners of passing judgment. In monarchies the judges chuse the method of arbitration; they deliberate together, they communicate their sentiments for the sake of unanimity; they moderate their opinions, in order to render them conformable to those of others; and the lesser number are obliged to yield to the majority. But this is not agreeable to the nature of a republic. At Rome, and in the cities of Greece, the judges never entered into a consultation; each gave his opinion one of these three ways, *I absolve, I condemn, it does not appear clear to me*†: this was because the people judged, or were supposed to judge. But the people are far from being civilians; all these restrictions and methods of arbitration are beyond their reach; they must have only one object, and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment.

THE Romans introduced set forms of actions §, after the example of the Greeks, and established a rule, that each cause should be directed by its proper action. This was necessary in their manner of judging; it was necessary to fix the state of the

† *Non liquet.*

§ *Quas actiones ne populus prout vellet institueret, certas solennesque esse voluerunt. Lib. 2. Sect. 6. Digest. de Orig. Jur.*

question, that the people might have it continually before their eyes. Otherwise, in a long process, this state of the question would always change, and be no longer distinguished.

HENCE it followed, that the Roman judges granted only the simple demand, without making any addition, deduction, or limitation. But the *prators* devised other forms of actions, which were called *ex bona fide*, where the method of pronouncing sentence was left to the disposition of the judge. This was more agreeable to the spirit of monarchy. Hence it is a saying among the French lawyers, *that in France ¶ all actions are ex bona fide.*

C H A P. V.

In what Governments the Prince may be Judge.

MACHIAVEL† attributes the loss of the liberty of Florence to the people's not judging in a body in cases of high-treason against themselves, as was customary at Rome. For this purpose these had eight judges: *but the few*, says Machiavel, *are corrupted by a few.* I should willingly adopt the maxim of this great man. But as in those cases the political interest prevails in some measure over the civil (for it is always an inconvenience that the people should be judges in their own cause), in order to remedy this evil, the laws must provide as much as possible for the security of individuals.

WITH this view the Roman legislators did two things; they allowed the persons accused to banish

¶ In France a person, though sued for more than he owes, loses his costs, if he has not offered to pay the exact debt.

† Discourse on the first Decade of Livy, book 1, chap. 7.

themselves* before sentence was pronounced ¶; and they ordained, that the goods of those who were condemned should be sacred, to prevent their being confiscated to the people. We shall see in the XIth book, the other limitations that were set to the judicatory power residing in the people.

SOLON knew how to prevent the abuse which the people might make of their power in criminal judgments. He ordained, that the court of Areopagus should re-examine the affair; that if they believed the party accused was unjustly acquitted †, they should impeach him again before the people; that if they believed him unjustly condemned §, they should prevent the execution of the sentence, and make them rejudge the proceeding. An admirable law, that subjected the people to the censure of the magistracy which they most respected, and even to their own!

IN affairs of this kind, it is always proper to throw in some delays, particularly when the party accused is under confinement; in order that the people may grow calm, and give their judgment coolly.

In despotic governments, the prince himself may be judge. But in monarchies this cannot be; the constitution by such means would be subverted, and the dependent intermediate powers annihilated; all set forms of judgment would cease; fear would take possession of the people's minds, and paleness spread

* This is well explained in Cicero's oration *pro Cecina*, towards the end.

¶ This was a law at Athens, as appears by Demosthenes. Socrates refused to make use of it.

† Demosthenes *pro corona*, p. 494. edit. Frankf. an. 1604.

§ See Philostratus's lives of the Sophists, book 1. Life of Æschines.

itself over every countenance: the more confidence, honour, affection, and security in the subject, the more extended is the power of the sovereign.

WE shall give here a few more reflections on this point. In monarchies, the prince is the party that prosecutes the person accused, and causes him to be punished or acquitted; now were he himself to sit upon the trial, he would be both judge and party.

IN this government the monarch has frequently the benefit of confiscation; so that here again, by determining criminal causes, he would be both judge and party.

FARTHER, by this method he would deprive himself of the most glorious attribute of sovereignty, namely, that of granting pardon*; for it would be quite ridiculous of him to make and unmake his decisions: he would not certainly chuse to contradict himself.

BESIDES, this would be confounding all ideas; it would be impossible to tell whether a man was acquitted, or pardoned.

LEWIS XIII. being desirous to sit in judgment upon the trial of the duke *de la Valette* †, sent for some members of the parliament, and of the privy-council, to debate the matter: upon their being commanded by the king to give their opinion concerning the warrant for his arrest, the president *de Believre* said, “ That he found it very strange “ a prince should pass sentence upon a subject; that

* Plato does not think it right that kings, who, as he says, are priests, should preside on trials where people are condemned to death, to banishment, or imprisonment.

† See the relation of the trial of the duke *de la Valette*. It is printed in the *Memoirs of Montresor*, tom. 2. p. 62.

“ kings had reserved to themselves the power of
 “ pardoning, and left that of condemning to their
 “ officers; that his majesty wanted to see before
 “ him at the bar a person, who by his decision was
 “ to be hurried away into the other world! That
 “ the prince’s countenance should inspire with hopes,
 “ and not confound with fears; that his presence
 “ alone removed ecclesiastic censures; and that sub-
 “ jects ought not to go away dissatisfied from the
 “ sovereign.” When sentence was passed, the same
 magistrate declared, “ This is an unprecedented
 “ judgment, to see, contrary to the example of
 “ past ages, a king of France, in the quality of a
 “ judge, condemning a gentleman to death *.”

AGAIN, sentences passed by the monarch would
 be an inexhaustible source of injustice and abuse;
 the courtiers by their importunity would always be
 able to extort his decisions. Some Roman empe-
 rors were so mad as to sit as judges themselves;
 the consequence was, that no reigns ever so asto-
 nished the world with oppression and injustice.

Claudius, says Tacitus †, *having appropriated*
to himself the determination of law-suits, and the
function of magistrates, gave occasion to all manner
of rapine. But Nero, upon coming to the empire
 after Claudius, endeavoured to conciliate the minds
 of the people, by declaring, “ That he would take
 “ care not to be judge himself in private causes,
 “ that the parties might not be exposed within the
 “ walls of a palace to the iniquitous influence of a
 “ few freedmen §.”

Under the reign of Arcadius, says Zozimus ¶, a

* It was afterwards revoked. See the same relation.

† Annal. lib. 11.

§ Ibid. lib. 13.

¶ Hist. lib. 5.

swarm of calumniators spread themselves on every side, and infected the court. Upon a person's decease, it was immediately thought he had left no children ¶; and, in consequence of this, his property was given away by a rescript. For as the prince was very stupid, and the empress excessively enterprizing, she was a slave to the insatiable avarice of her domestics und confidents; insomuch, that to an honest man nothing could be more desirable than death.

*Formerly, says Procopius *, there used to be very few people at court; but in Justinian's reign, as the judges had no longer the liberty of administering justice, their tribunals were deserted, while the prince's palace resounded with the litigious clamours of the several parties. No one is ignorant what a prostitution there was of public judgments, and even of the very laws themselves, at that emperor's court.*

THE laws are the eye of the sovereign; by them he beholds what would otherwise escape his observation. Should he attempt the function of a judge, he would not then labour for himself, but for impostors, whose aim is to deceive him.

C H A P. VI.

That in Monarchies the Ministers ought not to sit as Judges.

IF is also a very great inconveniency in monarchies, for the ministers of the sovereign to sit as judges. We have still instances of states where there are a prodigious number of judges to decide

¶ The same disorder happened under Theodosius the younger.

* Secret history.

exchequer causes, and where the ministers nevertheless (a thing almost incredible!) would fain determine them. Many are the reflections that here arise; but this single one will suffice for my purpose.

THERE is in the very nature of things a kind of contrast between a prince's council and his courts of judicature. The king's council ought to be composed of a few persons, and the courts of judicature of a great many. The reason is, in the former, things should be undertaken and conducted with a kind of warmth and passion, which can hardly be expected, but from four or five men who make it their sole business. On the other hand, in courts of judicature a certain coolness is requisite, and an indifference, in some measure, to all manner of affairs.

CHAP. VII.

Of a single Magistrate.

A Magistracy of this kind cannot take place but in a despotic government. We have an instance in the Roman history how far a single magistrate may abuse his power. Might it not be very well expected that *Appius* on his tribunal should despise all laws, after having violated that of his own † enacting? Livy has given us the iniquitous distinction of the Decemvir. He had suborned a man to reclaim *Virginia* in his presence as his slave; *Virginia's* relations insisted, that by virtue of his own law she should be consigned to them, till the definitive judgment was passed. U-

† See the 2d law. Sect. 24. ff. de Orig. Jur.

pon which he declared, that his law had been enacted only in favour of the father; and that as Virginius was absent, no application could be made of it to the present case §.

C H A P. VIII.

Of Accusation in different Governments.

AT Rome ¶ it was lawful for one citizen to accuse another; this was agreeable to the spirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and is supposed to hold all the rights of his country in his own hand. Under the emperors, the republican maxims were still pursued; and instantly appeared a pernicious tribe, a swarm of informers. Cunning, wicked men, who could stoop to any indignity, to serve the purposes of their ambition, were sure to busy themselves in the search of criminals, whose condemnation might be agreeable to the sovereign: this was the road to honour and preferment †; but luckily we are strangers to it in our country.

WE have at present an admirable law, namely, that by which the prince, who is established for the execution of the laws, appoints an officer in each court of judicature to prosecute all kinds of crimes in his name: hence the profession of informers is a thing we are ignorant of; for if this

§ *Quod paterpuella abesse, locum injurie esse ratus.* Livius, Dec. 1. lib. 3.

¶ And in several other cities.

† See in Tacitus the rewards given to those informers.

public avenger were suspected to abuse his office, he would soon be obliged to mention his author.

By Plato's laws §, those who neglect to inform or to assist the magistrates, are liable to punishment. This would not be so proper in our days. The public prosecutor watches for the safety of the citizens; he proceeds in his office, while they enjoy their quiet and ease.

C H A P. IX.

Of the Severity of Punishments in different Governments.

THE severity of punishments is fitter for despototic governments, whose principle is terror, than for a monarchy or a republic, whose spring is honour and virtue.

IN moderate governments, the love of one's country, shame, and the fear of blame, are restraining motives, capable of preventing a multitude of crimes. Here the greatest punishment of a bad action is conviction. The civil laws have therefore a softer way of correcting, and do not require so much severity and power.

IN those states a good legislator is less bent upon punishing, than preventing crimes; he is more attentive to inspire good morals, than to inflict penalties.

IT is a constant observation of the Chinese authors *, that the more the penal laws were increased in their empire, the nearer they drew towards

§ Lib. 9.

* I shall shew hereafter that China is, in this respect, in the same case as a republic or a monarchy.

a revolution. This is because punishments were augmented in proportion as the public morals were corrupted.

It would be an easy matter to prove, that in all, or almost all the governments of Europe, penalties have increased or diminished in proportion as those governments favoured or discouraged liberty.

In despotic governments, people are so unhappy, as to have a greater dread of death than regret for the loss of life; consequently their punishments ought to be more severe. In moderate states, they are more apprehensive of losing their lives than of the pain of dying; those punishments therefore which deprive them simply of life, are sufficient.

MEN in excess of happiness or misery are equally inclinable to severity; witness conquerors and monks. It is mediocrity alone, and a mixture of prosperous and adverse fortune, that inspire us with lenity and piety.

WHAT we see practised by individuals, is equally observable in regard to nations. In countries inhabited by savages, who lead a very hard life, and in despotic governments, where there is only one person on whom fortune lavishes her favours, while the miserable subjects lie exposed to her insults, people are equally cruel. Lenity reigns in moderate governments.

WHEN, in reading history, we observe the cruelty of the sultans in the administration of justice, we shudder at the very thought of the wretchedness of human nature.

In moderate governments, a good legislator may make use of every thing by way of punishment. Is it not very surprizing, that one of the chief

penalties at Sparta was to deprive a person of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins? In a word, whatever the law calls a punishment, is such effectively.

CHAP. X.

Of the ancient French Laws.

IN the ancient French laws we find the true spirit of monarchy. In cases respecting pecuniary fines, the common people are not so severely punished as the nobility*. But in criminal † cases it is quite the reverse; the nobleman loses his honour and his voice in court, while the peasant, who has no honour to lose, undergoes a corporal punishment.

CHAP. XI.

That when a People are virtuous, few punishments are necessary.

THE people of Rome had some share of probity. Such was the force of this probity, that the legislator had often no farther occasion than to point out the right road, and they were sure to

* Suppose, for example, to prevent the execution of a decree, the common people paid a fine of forty sous, and the nobility of sixty livres. *Somme Rurale*, book 2 p. 198. edit. Got. of the year 1512.

† See the Council of Peter Desfontaines, chap. 13. especially the 22d art.

follow it; one would imagine, that instead of precepts, it was sufficient to give them counsels.

THE punishments of the regal laws, and those of the twelve tables, were almost all abolished in the time of the republic, in consequence either of the *Valerian* ♦, or of the *Porcian* law §. It was never observed that this step prejudiced the civil administration in the least.

THIS Valerian law, which restrained the magistrates from using violent methods against a citizen that had appealed to the people, inflicted no other punishment on the person who infringed it, than that of being reputed a dishonest man *.

CH A P. XII.

Of the Power of Punishments.

EXPERIENCE shews, that in countries remarkable for the lenity of their laws, the spirit of the inhabitants is as much affected by slight penalties, as in other countries by severer punishments.

IF an inconveniency or abuse arises in the state, a violent government endeavours suddenly to redress it; and instead of putting the old laws in execution, it establishes some cruel punishment, which immediately puts a stop to the evil. But the

♦ It was made by *Valerius Publicola* soon after the expulsion of the kings, and was twice renewed, both times by magistrates of the same family, as *Livy* observes, lib. 10. the question was not to give it a greater force, but to render its injunctions more perfect. *Diligentius sanctum*, says *Livy*, ibid.

§ *Lex Porcia pro tergo civium lata*. It was made in the 454th year of the foundation of Rome.

* *Nihil ultra quam improbe factum adiecit*. *Liv.*

Spring of government hereby loses its elasticity; the imagination grows accustomed to the severe as well as to the milder punishment; and as the fear of the latter diminishes, they are soon obliged in every case to have recourse to the former. Robberies on the high-way were grown common in some countries; in order to remedy this evil, they invented the punishment of breaking upon the wheel, the terror of which put a stop for a while to this mischievous practice. But soon after robberies on the high-ways became as common as ever.

DESERTION in our days was grown to a very great pitch; in consequence of which it was judged proper to punish those delinquents with death; and yet their number did not diminish. The reason is very natural; a soldier, accustomed to venture his life, despises, or affects to despise, the danger of losing it. He is accustomed to the fear of shame; it would have been therefore much better to have continued a punishment *, which branded him with infamy for life: the penalty was pretended to be increased, while it really diminished.

MANKIND must not be governed with too much severity; we ought to make a prudent use of the means which nature has given us to conduct them. If we enquire into the occasion of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments.

LET us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the shame attending it.

BUT if there be some countries where shame is

* They slit his nose, or cut off his ears.

not a consequence of punishment, this must be owing to tyranny, which has inflicted the same penalties on villains and honest men.

AND if there are others where men are deterred only by cruel punishments, we may be certain that this must, in a great measure, arise from the violence of the government, which has used such penalties for slight transgressions.

IT frequently happens that a legislator, desirous of remedying an abuse, thinks of nothing else; his eyes are open only to this object, and shut to its inconveniencies. When the abuse is redressed, you see only the severity of the legislator; yet there remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotism.

LYSANDER * having obtained a victory over the Athenians, orders were given for the prisoners to be tried, in consequence of an accusation brought against that nation of having thrown all the captives of two galleys down a precipice, and of having resolved in full assembly to cut off the hands of those whom they should chance to make prisoners. The Athenians were therefore all massacred, except *Adymantes*, who had opposed this decree. *Lysander* reproached *Philocles*, before he was put to death, with having depraved the people's minds, and given lessons of cruelty to all Greece.

"*The Argives*, says Plutarch †, *having put fifteen hundred of their citizens to death, the Athenians ordered sacrifices of expiation, that it might please the Gods to turn the hearts of the Athenians from so cruel a thought.*"

* Xenophon hist. lib. 3.

† *Morals, of those who are intrusted with the direction of state affairs.*

THERE are two kinds of corruption; one when the people do not observe the laws; the other when they are corrupted by the laws: an incurable evil, because it is in the very remedy itself.

C H A P. XIX.

Insufficiency of the Laws of Japan.

EXCESSIVE punishments may even corrupt despotic government; of this we have an instance in Japan.

HERE almost all crimes are punished with death †, because disobedience to so great an emperor, as that of Japan, is reckoned a great crime. The question is not so much to correct the delinquent, as to vindicate the authority of the prince. These notions are derived from servitude, and are owing especially to this, that as the emperor is universal proprietor, almost all crimes are directly against his interests.

LIES spoken before the magistrate they punish with death ‡; a proceeding contrary to natural defence.

EVEN things which have not the appearance of a crime are severely punished; for example, a man that ventures his money at play is put to death.

TTRUE it is, that the character of this people, so surprizingly obstinate, capricious, and resolute, as to defy all dangers and calamities, seems to absolve their legillators from the imputation of cruelty, notwithstanding the severity of their laws. But are

† See Kempfer.

‡ Collection of voyages that contributed to the establishment of the East-India company, Tom. 3. p. 428.

men, who have a natural contempt of death, and who rip open their bellies for the least fancy; are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments?

WE are informed by the relations of travellers, with respect to the education of the Japanese, that children must be treated there with mildness, because they become hardened to punishment; that their slaves must not be too roughly used, because they immediately stand upon their defence. Would not one imagine, that they might easily have judged of the spirit, which ought to reign in their political and civil government, from that which should prevail in their domestic concerns?

A WISE legislator would have endeavoured to reclaim people by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to those characters; by a proper application of the rules of honour, by the enjoyment of ease and quietness of life. And should he have entertained any apprehension that their minds, being inured to the cruelty of punishments, would no longer be restrained by those of a milder nature, he would have conducted himself * in another manner, and gained his point by degrees: in particular cases, that admitted of any indulgence, he would have mitigated the punishment, till he should have been able to extend this mitigation to all cases.

BUT these are springs which despotic power is unacquainted with; it may abuse itself, and that

* Let this be observed as a maxim in practice, with regard to cases where the minds of people have been depraved by too great a severity of punishments.

is all it can do: in Japan it has made its utmost effort, and has surpassed even itself in cruelty.

As the minds of the people grew wild and intractable, they were obliged to have recourse to the most cruel severity.

THIS is the origin, this the spirit of the laws of Japan. They had more fury however than force. They succeeded in the extirpation of Christianity; but such unaccountable efforts are a proof of their insufficiency. They wanted to establish a good polity, and they have shewn greater marks of their weakness.

WE have only to read the relation of the interview between the Emperor and the Deyro at *Meaco* *. The number of those who were suffocated or murdered in that city by ruffians, is incredible; young maids and boys were carried off by force, and found afterwards exposed in public places, at unseasonable hours, quite naked, and sown in linen bags, to prevent their knowing which way they had passed; robberies were committed in all parts; the bellies of horses were ripped open, to bring their riders to the ground; and coaches were overturned, in order to rob the ladies. The Dutch, who were told they could not pass the night on the scaffolds, without exposing themselves to the danger of being assassinated, came down, &c.

I SHALL here give one instance more from the same nation. The emperor having abandoned himself to infamous pleasures, lived unmarried, and was consequently in danger of dying without issue. The Deyro sent him two beautiful young

* Collection of voyages that contributed to the establishment of the East-India company, Tom. 5. p. 2.

women; one he married out of respect, but would not meddle with her. His nurse caused the finest women of the empire to be sent for, but all to no purpose. At length an armorer's daughter having pleased his fancy †, he determined to marry her, and had a son. The ladies belonging to the court, enraged to see a person of such mean extraction preferred to themselves, stifled the child. The crime was concealed from the emperor; for he would have deluged the land with blood. The excessive severity of the laws therefore prevents their execution: when the punishment surpasses all measure, they are often obliged to prefer impunity to it.

C H A P. XIV.

Of the Spirit of the Roman Senate.

UNDER the consulate of Acilius Glabrio and Piso, the *Acilian law* † was made to prevent the intriguing for places. Dio says §, that the senate engaged the consuls to propose it, by reason that C. Cornelius the tribune had resolved to cause most severe punishments to be established against this crime; to which the people seemed greatly inclined. The senate rightly judged, that immoderate punishments would strike indeed a terror into the people's minds, but must have also this effect, that there would be no body afterwards to

† Collection of voyages that contributed to the establishment of the East-India Company, Tom. 5. p. 2.

◆ The guilty were condemned to a fine; they could not be admitted into the rank of senators, nor nominated to any public office. Dio, book. 36.

§ Book 36.

accuse or condemn; whereas, by proposing moderate penalties, there would be always judges and accusers.

CH A P. XV.

Of the Roman Laws in respect to Punishments.

I AM strongly confirmed in my opinion, upon finding the Romans upon my side; and I think that punishments are connected with the nature of government, when I behold this great people changing in this respect their civil laws, in proportion as they altered their form of government.

THE *regal* laws made for fugitives, slaves, and vagabonds, were very severe. The spirit of a republic would have required that the decemvirs should not have inserted those laws in their twelve tables; but men who aimed at tyranny were far from conforming to a republican spirit.

LIVY says *, with respect to the punishment of Metius Suffetius, dictator of Alba, who was condemned by Tullius Hostilius to be fastened to two chariots drawn by horses, and to be drawn asunder; that this was the first and last punishment, in which the remembrance of humanity seemed to have been lost. He is mistaken; the twelve tables are full of very cruel laws †.

THE design of the decemvirs appears most conspicuous in the capital punishment pronounced against libellers and poets. This is not agreeable to the genius of a republic, where the people like

* Lib. i.

† We find there the punishment of fire, and generally capital punishments, theft punished with death, &c.

to see the great men humbled. But persons who aimed at the subversion of liberty were afraid of writings that might restore its spirit *.

AFTER the expulsion of the decemvirs, most part of the penal laws were abolished. It is true, they were not expressly repealed; but as the *Porcian* law had ordained, that no citizen of Rome should be put to death, they were of no further use..

THIS is exactly the time to which we may refer what Livy says § of the Romans, that no people were ever sonder of moderation in punishments.

BUT if we add the right which the party accused had of withdrawing before judgment was pronounced to the lenity of the penal laws, we shall find that the Romans followed the spirit which I have observed to be natural to a republic.

SYLLA, who confounded tyranny, anarchy, and liberty, made the *Cornelian laws*. He seemed to have contrived regulations, merely with a view to create new crimes. Thus distinguishing a great number of actions by the name of murder, he found murderers in all parts; and by a practice but too much followed, he laid snares, sowed thorns, and opened precipices, wheresoever the citizens set their feet.

ALMOST all Sylla's laws contained only the interdiction of fire and water. Cæsar added to this the confiscation of goods †, because the rich, by

* Sylla, animated with the same spirit as the Decemvirs, followed their example, in augmenting the penal laws against satyrical writers.

§ Book I.

† *Pœnas facinorum auvit, cum locupletes eo facilius scelere se obligarent, quod integris patrimoniis exularent.* Suet. in Jul. Cæsare.

preserving their estates in exile, became bolder in the perpetration of crimes.

THE emperors having established a military government, soon found that it was as terrible to the sovereign as to the subject; they endeavoured therefore to temper it, and with this view had recourse to dignities, and to the respect with which those dignities were attended.

THE government thus drew nearer a little to monarchy, and punishments were divided into three classes †; those which related to the principal persons in the state *, which were very mild; those which were inflicted on persons of an inferior rank ‖, and were more severe; and, in short, such as concerned only persons of the meanest rank §, which were the most rigorous.

MAXIMINUS, that fierce and stupid prince, increased the rigour of the military government which he ought to have softened. The senate were informed, says Capitolinus ‡, that some had been crucified, others exposed to wild beasts, or sewed up in the skins of beasts lately killed, without any manner of regard to their dignity. It seemed as if he wanted to exercise the military discipline, on the model of which he pretended to regulate the civil administration.

IN the considerations on the rise of the Roman grandeur, and its decline, we find in what manner Constantine changed the military despotism into a

† See the 3d law, sect. legis ad leg. Cornel. de Sicariis, and an infinite number of others in the Digest, and in the Codex.

* Sublimiores.

‖ Medjos.

§ Infimos leg. 3. sect. legis ad leg. Cornel. de Sicariis.

‡ Jul. Cap. Maximini duo,

military and civil government, and drew nearer to monarchy. There we may trace the different revolutions of this state, and see how they fell from rigour to indolence, and from indolence to impunity.

C H A P. XVI.

Of the just Proportion betwixt Punishments and Crimes.

IT is an essential point, that there should be a certain proportion in punishments, because it is essential that a great crime should be avoided rather than a smaller, and that which is more hurtful to society rather than that which is less.

“AN impostor §, who called himself Constantine Ducas, raised a great insurrection at Constantinople. He was taken and condemned to be whipt; but upon informing against several persons of distinction, he was sentenced to be burnt as a calumniator.” It is very surprising, that they should thus proportion the punishments betwixt the crimes of high-treason and that of calumny.

THIS puts me in mind of a saying of Charles II. king of Great Britain. He saw a man one day standing in the pillory; upon which he asked what crime that man had been guilty of. He was answered, *Please your majesty, he has wrote a libel against your ministers.* The fool! replied the king, *why did he not write against me? they would have done nothing to him.*

“SEVENTY persons having conspired against

§ Hist. of Nicephorus, patriarch of Constantinople.

" the emperor Basil *; he commanded them to be
 " whipt, and the hair of their heads and beards to
 " be burnt. A stag one day having taken hold of
 " him by the girdle with his horn, one of his re-
 " tinue drew his sword, cut the girdle, and saved
 " him; upon which he ordered that person's head
 " to be cut off, for having, *said he*, drawn his
 " sword against his sovereign." Who could imagine
 that the same prince could ever have passed two
 such different judgments?

IT is a great abuse amongst us to condemn to
 the same punishment a person that only robs on the
 high-way, and another who robs and murders. Sure-
 ly, for the public security, some difference should
 be made in the punishment.

IN *China*, those who add murder to robbery, are
 cut in pieces †; but not so the others: to this dif-
 ference it is owing, that though they rob in that
 country, they never murder.

IN *Russia*, where the punishment of robbery and
 murder is the same, they always murder ‡. The
 dead, say they, tell no tales.

WHEN there is no difference in the penalty,
 there should be some in the expectation of a par-
 don. In *England* they never murder on the high-
 way, because robbers have some hopes of transpor-
 tation, which is not the case with respect to those
 that commit murder.

LETTERS of grace are of excellent use in mo-
 derate governments. The power which the mo-
 narch has of pardoning, exercised with prudence,
 is capable of producing admirable effects. The

* In Nicephorus's history.

† Duhalde, tom. 1. p. 6.

‡ Present state of *Russia*, by *Perry*.

principle of despotic government, which neither grants nor receives any pardon, deprives it of these advantages.

C H A P. XVII.

Of the Rack.

THE wickedness of mankind makes it necessary for the laws to suppose them better than they really are. Hence the deposition of two witnesses is sufficient in the punishment of all crimes. The law believes them, as if they spoke by the mouth of truth. Thus we judge that every child conceived in wedlock is legitimate; the law having a confidence in the mother, as if she were chastity itself. But the use of the rack against criminals cannot be defended on the like plea of necessity.

WE have before us the example of a nation blessed with an excellent civil government †, where without any inconveniency the practice of racking criminals is rejected. It is not therefore in its own nature necessary *.

So many men of learning and genius have written against the practice of torturing criminals, that after them I durst not presume to meddle with the

† The English

* The citizens of Athens could not be put to the rack (*Lyfias, Orat. in Agerat.*) unless it was for high-treason. The torture was used within thirty days after condemnation. (*Curius Fortunatus, Rector. Schol. lib. 2.*) There was no preparatory torture. In regard to the Romans, the third and fourth law *ad leg. Juliam Majest.* shews, that birth, dignity, and the military profession, exempted people from the rack except in cases of high-treason. See the prudent restrictions of this practice made by the laws of the Visigoths.

subject. I was going to say, that it might suit despotic states, where whatever inspires fear is the properest spring of government; I was going to say, that the slaves among the Greeks and Romans—— But nature cries out aloud, and asserts her rights.

C H A P. XVIII.

Of pecuniary and corporal Punishments.

THE Germans, our ancestors, admitted of none but pecuniary punishments. Those free and warlike people were of opinion, that their blood ought not be spilt but with sword in hand. On the other hand, these punishments are rejected by the Japanese ♦, under pretence that the rich might elude them. But are not the rich afraid of being stripped of their property? And might not pecuniary penalties be proportioned to people's fortunes? and, in short, might not infamy be added to those punishments?

A GOOD legislator takes a just medium; he ordains neither always pecuniary, nor always corporal punishments?

C H A P. XIX.

Of the Laws of Retaliation.

IN despotic countries, where they are fond of simple laws, the use of the *law of retaliation* † is very frequent. Moderate governments admit of it sometimes; but with this difference,

♦ See Kempfer.

† It is established in the Koran. See the *chapter of the cow*.

that the former exercise it in full rigour, whereas among the latter it always receives some kind of limitation.

THE law of the twelve tables admitted of two; first, it never condemned to retaliation, but when the plaintiff could not be satisfied in any other manner §. Secondly, after condemnation they might pay damages and interest *, and then the corporal was changed into a pecuniary punishment †.

C H A P. XX.

Of the Punishment of Fathers for their Children's Crimes.

FATHERS are punished for the crimes of their children in China. This was also the custom of Peru †; a custom derived from the notion of despotic power.

IT signifies little to say, that in China the father is punished for not having exerted his paternal authority, which nature has established, and the laws themselves have improved. This still supposes that there is no honour among the Chinese. Amongst us, parents whose children are condemned by the laws of their country, and children † whose parents have undergone the like fate, are as severely pu-

§ *Si memorum rupit, ni cum eo patit, talio est.* Aulus Gellius, lib. 20. cap. 1

* See Kempfer.

† See also the law of the Visigoths, book 6. tit. 4. sect. 3. and 5.

‡ See *Garcilasso*, history of the civil wars of the Spaniards.

† Instead of punishing them, says *Plato*, they ought to be commended for not having followed their father's example, *Book 9 of Laws.*

nished by shame, as they would be in China by the loss of their lives.

C H A P. XXI.

Of the Clemency of the Prince.

THE characteristic of sovereigns is *Clemency*. In republics, whose principle is virtue, it is not so necessary. In despotic governments, where fear predominates, it is less customary, because the great men are to be restrained by examples of severity. It is more necessary in monarchies, where they are governed by honour, which often requires what the very law forbids. Disgrace is here equivalent to chastisement; and even the forms of justice are punishments. This is because particular kinds of penalties are formed by shame, which on every side invades the delinquent.

THE great men in monarchies are so heavily punished by disgrace, by the loss (though often imaginary) of their fortune, credit, acquaintances, and pleasures, that rigour is unnecessary with respect to them. It can tend only to divest the subject of the affection he has for the person of his prince, and of the respect he ought to have for public posts and employments.

As the instability of the great is natural to a despotic government, so their security is interwoven with the nature of monarchy.

THE advantages which monarchs gain by clemency are so great, and so much does it raise their fame, and endear them to their subjects, that it is generally happy for them to have an opportunity of displaying it; which is seldom wanting in this part of the world.

SOME branch perhaps of their authority, but never hardly the whole, will be disputed: and if they sometimes fight for their crown; they do not fight for their life.

BUT some may ask, when it is proper to punish, and when to pardon? This is a point easier felt than prescribed. When there is danger in the exercise of clemency, it is visible; nothing so easy as to distinguish it from that imbecillity, which exposes princes to contempt, and to the very incapacity of punishing.

THE emperor Maurice * made a resolution never to shed the blood of his subjects. Anastasius † punished no crimes at all. Isaac Angelus took an oath, that no one should be put to death, during his reign. Those Greek emperors had forgot that the sword was not intrusted with them for nothing.

* *Evagr. hist.*

† *Frag. of Suidas, in Constant. Porphyrog.*





B O O K VII.

Consequences of the different Principles of the three Governments with regard to sumptuary Laws, Luxury, and the Condition of Women.

C H A P. I.

Of Luxury.

LUXURY is always in proportion to the inequality of fortunes. If the riches of a state are equally divided, there will be no luxury; for it is founded merely on the conveniencies acquired by the labour of others.

IN order to have this equal distribution of riches, the law ought to give to each man only what is necessary for nature. If they exceed these bounds, some will spend, and others will acquire, by which means an inequality will be established.

SUPPOSING what is necessary for the support of nature be equal to a given sum, the luxury of those who have only what is barely necessary will be equal to a *cypher*; if a person happens to have double that sum, his luxury will be equal to one; he that has double the latter's substance, will have a luxury equal to three; if this be still doubled, there will be a luxury equal to seven; so that the property of the subsequent individual being always supposed double to that of the preceding, the luxury will increase double, and an unit be always

added, in this progression, 0, 1, 3, 7, 15, 31, 63, 127.

IN Plato's republic *, luxury might have been exactly calculated. There were four kinds of Censuses, or rates of estates. The first was exactly the term beyond poverty, the second was double, the third triple, the fourth quadruple to the first. In the first Census, luxury was equal to a cypher; in the second to one, in the third to two, in the fourth to three; and thus it followed in an arithmetical proportion.

CONSIDERING the luxury of different nations with regard to one another, it is in each state in a compound proportion to the inequality of fortunes among the subjects, and to the inequality of wealth in different states. In Poland, for instance, there is an extreme inequality of fortunes; but the poverty of the whole prevents them from having so much luxury as in a more opulent government.

LUXURY is also in proportion to the populousness of the towns, and especially of the capital; so that it is in a compound proportion to the riches of the state, to the inequality of private fortunes, and to the number of people settled in particular places.

IN proportion to the populousness of towns, the inhabitants are filled with notions of vanity, and actuated by an ambition of distinguishing themselves by trifles †. If they are very numerous, and

* The first Census was the hereditary share in land, and Plato would not allow them to have, in other effects, above a triple of the hereditary share. See his *Laws*, book 5.

† In large and populous cities, says the Author of the *Fable of the Bees*, tom 1. p. 97. they wear clothes above their rank, and, consequently, have the pleasure of being esteemed by a vast majority, not

most of them strangers to one another, their vanity redoubles, because there are greater hopes of success. As luxury inspires these hopes, each man assumes the marks of a superior condition. But by endeavouring thus at distinction, every one becomes equal, and distinction ceases; as all are desirous of respect, no body is regarded.

HENCE arises a general inconveniency. Those who excel in a profession, set what value they please on their labour; this example is followed by people of inferior abilities; and then there is an end of all proportion between our wants and the means of satisfying them. When I am forced to go to law, I must be able to see council; when I am sick, I must have it in my power to see a physician.

SEVERAL are of opinion, that the assembling so great a number of people in capital cities is an obstruction to commerce, because the inhabitants are no longer at a proper distance from each other. But I cannot think so; for men have more desires, more wants, more fancies, when they live together.

CH A P. II.

Of sumptuary Laws in a Democracy.

WE have remarked, that in a republic where riches are equally divided, there can be no such thing as luxury; and as we have shewn in the

as what they are, but what they appear to be.— They have the satisfaction to imagine, that they appear what they would be; which, to weak minds, is a pleasure almost as substantial as they could reap from the very accomplishment of their wishes:

fifth book *, that this equal distribution constitutes the excellency of a republican government; hence it follows, that the less luxury there is in a republic, the more it is perfect. There was none among the old Romans, none among the Lacedæmonians; and in republics where this equality is not quite lost, the spirit of commerce, industry, and virtue, makes every man able and willing to live on his own property, and consequently prevents the growth of luxury.

THE laws relating to the new division of lands, insisted upon so eagerly in some republics, were of the most salutary nature. They are dangerous, only as they are subitaneous. By reducing instantly the wealth of some, and increasing that of others, they form a revolution in each family, ~~and must~~ produce a general one in the state.

IN proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular interests. Those who are allowed only what is necessary, have nothing but their own reputation and their country's glory in view. But a soul depraved by luxury has many other desires; and soon becomes an enemy to the laws that confine it. The luxury in which the garrison of *Rhegio* began to live, was the reason of their slaughtering the inhabitants.

No sooner were the Romans corrupted, than their desires became boundless and immense. Of this we may judge by the price they set on things. A pitcher of Falernian wine † was sold for an hundred Roman denarii; a barrel of salt meat from

* Chap. 4. and 5.

† Fragment of the 36th book of Diodorus, quoted by Const. Porphyrogen. in his extract of virtues and vices.

the kingdom of Pontus cost four hundred; a good cook four talents; and for boys, no price was reckoned too great. When the whole world, impelled by the force of corruption, is immersed in voluptuousness ¶, what then must become of virtue?

C H A P. III.

Of sumptuary Laws in an Aristocracy.

THERE is this inconveniency in an ill-constituted aristocracy, that the wealth centers in the nobility, and yet they are not permitted to spend; for as luxury is contrary to the spirit of moderation it must be banished from thence. This government comprehends therefore only people who are very poor, and cannot acquire; and people who are extremely rich, and cannot spend.

IN Venice they are compelled by the laws to moderation. They are so accustomed to parsimony, that none but courtezans can make them part with their money. Such is the method made use of for the support of industry; the most despicable of women may be profuse without danger, whilst those who contribute to their extravagance consume their days in the greatest obscurity.

THE institutions of the principal republics of Greece were admirable in this respect. The rich employed their money in festivals, musical choruses, chariots, horse-races, and chargeable offices. Wealth was therefore as burthensome there as poverty.

¶ *Cum maximus omnium impetus ad luxuriam esset, Ibid.*

C H A P. IV.

Of sumptuary Laws in a Monarchy.

TACITUS says §, *That the Suiones, a German nation, have a particular respect for riches; for which reason they live under the government of one person.* This shews, that luxury is extremely proper for monarchies, and that under this government there must be no sumptuary laws.

As riches, by the very constitution of monarchies, are unequally divided, there is an absolute necessity for luxury. Were the rich not to be lavish, the poor would starve. It is even necessary here, that the expences of the wealthy should be in proportion to the inequality of fortunes; and that luxury, as has been already remarked, should increase in proportion. The augmentation of private wealth is owing to its having deprived one part of the citizens of their necessary support; this must therefore be restored to them.

HENCE it is, that for the preservation of a monarchical state, luxury ought continually to increase, and to grow more extensive, as it rises from the labourer to the artificer, to the merchant, to the magistrate, to the nobility, to the great officers of state, up to the very sovereign; otherwise the nation will be undone.

IN the reign of Augustus, a proposal was made in the Roman senate, which was composed of grave magistrates, learned civilians, and of men whose heads were filled with the notion of the primitive times, to reform the manners and luxury of wo-

men. It is curious to see in *Dio* *, with what art this prince eluded the importunate solicitations of those senators. This was because he was founding a monarchy, and dissolving a republic.

UNDER Tiberius, the *Ædiles* proposed in the senate the re-establishment of the ancient sumptuary laws †. This prince, who did not want sense, opposed it. *The state*, said he, *could not possibly subsist in the present situation of things. How could Rome, how could the provinces, live? We were frugal while we were only masters of one city; now we consume the riches of the whole world, and employ both the masters and the slaves in our service.* He plainly saw, that sumptuary laws would not suit the present form of government.

WHEN a proposal was made under the same emperor to the senate, to prohibit the governors from carrying their wives with them into the provinces, because of the dissoluteness and irregularity which followed those ladies, the proposal was rejected. It was said, *that the examples of ancient austerity had been changed into a more agreeable method of living* ♦. They found there was a necessity for different manners.

LUXURY is therefore very necessary in monarchies; as it is also in despotic states. In the former, it is the use of liberty; in the latter it is the abuse of servitude. A slave appointed by his master to tyrannize over other wretches of the same condition, uncertain of enjoying to-morrow the blessings of to-day, has no other felicity than that

* *Dio Cassius*, lib. 54.

† *Tacit. Annal.* lib. 3.

♦ *Multa duritiei veterum melius & latius mutata.* *Tacit. Annal.* lib. 3.

of glutting the pride, the passions and voluptuousness of the present moment.

HENCE arises a very natural reflection. Republics end with luxury; monarchies with poverty ♦.

C H A P. V.

In what Cases sumptuary Laws are useful in a Monarchy.

SUMPTUARY laws were made in Aragon in the thirteenth century, either from a republican spirit, or from some other particular circumstance. James I. ordained, that neither the king nor any of his subjects should have above two kinds of dishes at a meal, and that each dish should be dressed only one way, except it were game of their own killing *.

IN our days, sumptuary laws have been also enacted in Sweden; but with a different view from those of Aragon.

A GOVERNMENT may make sumptuary laws with a view to absolute frugality; this is the spirit of sumptuary laws in a republic; and the very nature of the thing shews, that such was the design of those of Aragon.

SUMPTUARY laws may also be established with a design to promote a relative frugality: when a government perceiving that foreign merchandizes, being at too high a price, will require such an exportation of home manufactures, as to deprive them of more advantages by the loss of the latter,

♦ *Opulentia paritura max egestatem.* Florus, lib. 3.

* Continuation of James I. in the year 1234, article 6, in *Marca Hispanica*, p. 1429.

than they can receive from the possession of the former, they will forbid their being introduced. And this is the spirit of the laws which in our days have been passed in Sweden §. Such are the sumptuary laws proper for monarchies.

In general, the poorer a state, the more it is ruined by its relative luxury; and consequently the more occasion it has for relative sumptuary laws. The richer a state, the more it thrives by its relative luxury; for which reason it must take particular care not to make any relative sumptuary laws. We shall better explain this in the book on commerce †; here we treat only of absolute luxury.

CH A P. VI.

Of the Luxury of China.

SUMPTUARY laws may, in some governments, be necessary for particular reasons. The people, by the influence of the climate, may grow so numerous, and the means of subsisting may be so uncertain, as to render an universal application to agriculture very necessary. As luxury in those countries is dangerous, their sumptuary laws should be, very severe. In order therefore to be able to judge whether luxury ought to be encouraged or proscribed, we should examine first what relation there is between the number of people and the facility they have of procuring subsistence. In England the soil produces more grain than is necessary for the maintenance of such as cultivate the land,

§ They have prohibited rich wines and other costly merchandizes.

† See vol. 2, book 20, chap. 20.

and of those who are employed in the woollen manufactures. This country may be therefore allowed to have some trifling arts, and consequently luxury. There is also corn enough in France for the support of the husbandman, and of the manufacturer. Besides, a foreign trade may bring in so many necessaries in return for toys, that there is no danger to be apprehended from luxury.

On the other hand, in China the women are so prolific, and the human species multiplies so fast, that the lands, tho' never so much cultivated, are hardly sufficient to support the inhabitants. Here therefore luxury is pernicious, and the spirit of industry and oeconomy is as requisite, as in any republic *. They are obliged to pursue the necessary arts, and to shun those of luxury and pleasure.

THIS is the spirit of the excellent decrees of the Chinese emperors. *Our ancestors*, says an emperor of the family of the Tangs §, *held it as a maxim, that if there was a man who did not work, or a woman that was idle, somebody must suffer cold or hunger in the empire.* And on this principle he commanded several of the monasteries of Bonzes to be destroyed.

THE third emperor of the one and twentieth Dynasty †, to whom some precious stones were brought that had been found in a mine, ordered it to be shut up, not chusing to fatigue his people with working for a thing that could neither feed nor cloath them.

* Luxury has been here always prohibited.

§ In an ordinance quoted by Father Du Halde, tom. 2. p. 496.

† History of China, 21st Dynasty in Father Du Halde's work, tom. 1.

So great is our luxury, says Kiayventi ¶, that people adorn with embroidery the shoes of boys and girls, whom they are obliged to sell. Is employing so many people in making cloaths for one person the way to prevent a great many from wanting cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preserve numbers from wanting food?

C H A P. VII.

Fatal Consequence of Luxury in China.

IN the history of China we find it has had twenty-two successive Dynasties, that is, it has experienced twenty-two general, without mentioning an infinite number of particular, revolutions. The three first Dynasties lasted a long time, because they were wisely administered, and the empire had not so great an extent as it afterwards obtained. But we may observe in general, that all those Dynasties began very well. Virtue, attention, and vigilance, are necessary in China; these prevailed in the beginning of the Dynasties, and failed in the end. It was natural, that emperors trained up in military toil, who had compassed the dethroning of a family immersed in pleasure, should adhere to virtue, which they had found so advantageous, and be afraid of voluptuousness, which they knew had proved so fatal to the family dethroned. But after the three or four first princes, corruption, luxury, indolence, and pleasure, possessed their successors; they shut themselves up in a palace; their understanding was

¶ In a discourse cited by Father Du Halde, tom. 2. p. 418.

impaired; their life was shortened; the family declined; the grandees rose up; the eunuchs gained credit; none but children were set on the throne; the palace was at variance with the empire; a lazy set of people that dwelled there ruined the industrious part of the nation; the emperor was killed or destroyed by an usurper, who founded a family, the third or fourth successor of which went and shut himself up in the very same palace.

C H A P. VIII.

Of public Continency.

THERE are so many imperfections that attend the loss of virtue in women, and so greatly are their minds depraved, when this principal guard is removed; that in a popular state public incontinency may be considered as the last of miseries, and as a certain fore-runner of a change in the constitution.

HENCE it is that the sage legislators of republican states have ever required of women a particular gravity of manners. They have proscribed not only vice, but the very appearance of it. They have banished even all commerce of gallantry, a commerce that produces idleness, that renders the women corrupters even before they are corrupted, that gives a value to trifles, and debases things of importance; in a word, a commerce, that makes people act intirely by the maxims of ridicule, in which the women are so perfectly skilled.

C H A P. IX.

Of the State of Women in different Governments.

WOMEN are subject to very little restraint in monarchies, because as the distinction of ranks calls them to court, there they assume a spirit of liberty, which is almost the only one tolerated in that place. Each courtier avails himself of their charms and passions, in order to advance his fortune: and as their weakness admits not of pride, but of vanity, luxury constantly attends them.

IN despotic governments women do not introduce, but are themselves an object of, luxury. They must be in a state of the most rigorous servitude. Every one follows the spirit of the government, and adopts in his own family the customs he beholds established elsewhere. As the laws are very severe, and executed on the spot, they are afraid lest the liberty of women should expose them to danger. Their quarrels, indiscretions, repugnances, jealousies, piques, and that art, in short, which little souls have of interesting great ones, would be attended there with fatal consequences.

BESIDES, as princes in those countries make a sport of human nature, they allow themselves a vast number of women, and a thousand considerations oblige them to keep those women in close confinement.

IN republics women are free by the laws, and restrained by manners; luxury is banished from thence, and with it corruption and vice.

IN the cities of Greece, where they were not under the restraint of a religion which declares that

even amongst men regularity of manners is a part of virtue; where a blind passion triumphed with a boundless insolence, and love appeared only in a shape which we dare not mention, while marriage was considered as nothing more than simple friendship*; such was the virtue, simplicity, and chastity of women in those cities, that in this respect hardly any people were ever known to have had a better and wiser polity†.

CHAP. X.

Of the domestic Tribunal among the Romans.

THE Romans had no particular magistrates, like the Greeks, to inspect the conduct of women. The censors had not an eye over them, but as over the rest of the republic. The institution of the domestic tribunal § supplied the magistracy established among the Greeks ¶.

THE husband summoned the wife's relations, and tried her in their presence*. This tribunal

* In respect to true love, says Plutarch, the women have nothing to say to it. In his treatise of love, p. 600. He spoke in the stile of his time. See Xenophon in the dialogue intitled Hiero.

† At Athens there was a particular magistrate who inspected the conduct of women.

§ Romulus instituted this tribunal, as appears from Dionysius Halicarnass. book 2. p. 96.

¶ See in Livy, book 39. the use that was made of this tribunal at the time of the conspiracy of the Bacchanals: they gave the name of conspiracy against the republic to assemblies, in which the morals of women and young people were debauched.

* It appears from Dionys. Halicarn. lib. 2. that Romulus's institution was, that in ordinary cases the husband should sit as judge in presence of the wife's relations, but that in heinous crimes he should de-

preserved the manners of the republic; and at the same time these very manners maintained this tribunal. For it decided not only with regard to the violation of the laws, but also of manners; now in order to judge of the violation of the latter, manners are requisite.

THE penalties inflicted by this tribunal ought to be, and actually were, arbitrary: for all that relates to manners, and to the rules of modesty, can hardly be comprised under one code of laws. It is easy indeed to regulate by laws what we owe to others; but it is very difficult to comprise all we owe to ourselves.

THE domestic tribunal inspected the general conduct of women: but there was one crime, which beside the animadversion of this tribunal, was likewise subject to a public accusation. This was adultery; whether that in a republic so great a depravation of manners interested the government, or whether the wife's immorality might render the husband's suspected; or whether, in short, they were afraid lest even honest people might chuse that this crime should rather be concealed, than punished.

C H A P. XI.

In what manner the Institutions changed at Rome, together with the Government.

AS manners were supposed by the domestic tribunal, they were also supposed by the pub-

termine in conjunction with five of them. Hence Ulpian tit. 8. Sect. 9, 12, & 13, distinguishes in respect to the different judgments of manners, between those which he calls important, and those which are less so, *graviore, leviores*.

lic accusation; and hence it is that these two things fell together with the public manners, and ended with the republic †.

THE establishing of perpetual questions, that is, the division of jurisdiction among the prætors, and the custom gradually introduced of the prætors determining all causes themselves*, weakened the use of the domestic tribunal. This appears by the surprize of historians, who look upon the decisions which Tiberius caused to be given by this tribunal as singular facts, and as a renewal of the antient course of pleading.

THE establishment of monarchy and the change of manners put likewise an end to public accusations. It might be dreaded lest a dishonest man, affronted at the slight shewn him by a woman, vexed at her refusal, and incensed even by her virtue, should form a design to destroy her. The *Julian* law ordained that a woman should not be accused of adultery, till after her husband had been charged with favouring her irregularities; which limited greatly, and annihilated, as it were, this kind of accusation §.

SIXTUS Quintus seemed to have been desirous of reviving the public accusation ¶. But it is very easy to see, that this law would be more improper in such a monarchy as his, than in any other.

† *Judicio de moribus (quod antea quidem in antiquis legibus positum erat, non autem frequentabatur) penitus abolito, leg. 11. Cod. de repud.*

* *Judicia extraordinaria.*

§ It was entirely abolished by Constantine: "It is a shame, *said he*, "that settled marriages should be disturbed by the presumption of "strangers."

¶ Sixtus Quintus ordained, that if a husband did not come and make his complaint to him of his wife's infidelity, he should be put to death. See *Leti*.

C H A P. XII.

Of the Guardianship of Women among the Romans.

THE Roman laws subjected women to a continual guardianship, except they were under cover, and subject to the authority of a husband *. This guardianship was given to the nearest of the male relations; and by a vulgar expression † it appears they were very much confined. This was proper for a republic, but not at all necessary in a monarchy §.

THAT the women among the ancient Germans were also under a perpetual tutelage, appears from the different codes of the Laws of the Barbarians ¶. This custom was communicated to the monarchies founded by those people; but was not of a long duration.

C H A P. XIII.

Of the punishments decreed by Emperors against the Incontinency of Women.

THE Julian law ordained a punishment against adultery. But so far was this law, any more than those afterwards made on the same account, from being a mark of regularity of manners, that on the contrary it was a proof of their depravation.

* *Nisi convenissent in manum viri.*

† *Ne sis mihi patruus oro.*

§ The Papien law ordained under Augustus that women who had borne three children should be exempt from this tutelage.

¶ This tutelage was by the Germans called *Mundeburdium*.

THE whole political system with regard to women received a change in the monarchical state. The question was no longer to oblige them to a regularity of manners, but to punish their crimes. That new laws were made to punish their crimes, was owing to their leaving those transgressions unpunished, which were not of so criminal a nature.

THE frightful dissolution of manners obliged indeed the emperors to enact laws in order to put some stop to lewdness; but they never intended to establish a general reformation. Of this the positive facts related by historians are a much stronger proof, than all these laws can be of the contrary. We may see in *Dio* the conduct of Augustus on this occasion, and in what manner he eluded, both in his prætorian and censorian office, the repeated instances that were made him†, for that purpose.

IT is true, that we find in historians very rigid sentences, passed in the reigns of Augustus and Tiberius against the lewdness of some Roman ladies: but by shewing us the spirit of those reigns, at the same time they demonstrate the spirit of those decisions.

THE chief design of Augustus and Tiberius was to punish the dissoluteness of their relations. It was not their immorality they punished, but a par-

† Upon their bringing before him a young man, who had married a woman with whom he had before carried on an unlawful commerce, he hesitated a long while, not daring to approve or to punish these things. At length recollecting himself, *seditions*, says he, *have been the cause of very great evils, let us forget them.* *Dio*, book 54. The senate having desired him to give them some regulations with regard to women's morals, he evaded their petition by telling them, that they should chastise their wives in the same manner as he did his; upon which they desired him to tell them how he behaved to his wife? (A question, I think, which was not very discreet).

ticular crime of impiety or high-treason * of their own invention, which served to promote a respect for majesty, and answered their private revenge. Hence it is that the Roman historians inveigh so bitterly against this tyranny.

THE penalty of the *Julian* law was small †. The emperors insisted that in passing sentence the judges should increase the penalty of the law. This was the subject of the invectives of historians. They did not examine whether the women were deserving of punishment, but whether they had violated the law, in order to punish them.

ONE of the most tyrannical proceedings of Tiberius § was the abuse he made of the ancient laws. When he wanted to extend the punishment of a Roman lady beyond that inflicted by the *Julian* law, he revived the domestic tribunal ¶.

THESE regulations with regard to women concerned only senatorial families, but not the common people. Pretences were wanted to accuse the great, which were constantly furnished by the dissolute behaviour of the ladies.

IN short, what I have above observed, namely, that regularity of manners is not the principle of monarchy, was never better verified than under

* Culpam inter viros & fœminas vulgatam gravi nomine læsarum religionum appellando, clementiam majorum suarumque ipse leges egrediebatur, *Tacit. Annal. lib. 3.*

† This law is given in the Digest; but without mentioning the penalty. It is supposed it was only *relegatio*, because that of incest was only *deportatio*. *Leg. si quis viduam, ff. de quæst.*

§ Proprium id Tiberio fuit scelera nuper reperta priscis verbis obtegere. *Tacit.*

¶ Adulterii graviolem poenam deprecatus, ut exemplo majorum propir quis suis ultra ducentessim lapidem removeretur, suavit. Adultero Manlio Italia atque Africa interdictum est. *Tacit. Annal. lib. 2.*

these first emperors; and whoever doubts of it need only read Tacitus, Suetonius, Juvenal, or Martial.

C H A P. XIV.

Sumptuary Laws among the Romans.

WE have spoken of public incontinency, because it is the inseparable companion of luxury. If we leave the motions of the heart at liberty, how shall we be able to restrain the weaknesses of the mind?

AT Rome, besides the general institutions, the censors prevailed on the magistrates to enact several particular laws for maintaining the frugality of women. This was the design of the Fannian, Licinian, and Oppian laws. We may see in *Livy* * the great ferment the senate was in, when the women insisted upon the revocation of the Oppian law. The abrogation of this law is fixed upon by Valerius Maximus as the period from whence we may date the luxury of the Romans.

C H A P. XV.

Of Dowries and Nuptial Advantages in different Constitutions.

DOWRIES ought to be considerable in monarchies, in order to enable husbands to support their rank and the established luxury. In republics, where luxury should never reign †, they

* Decad. IV. lib. 4.

† Marseilles was the wisest of all the republics in its time; here it was ordained that dowries should not exceed one hundred crowns in money, and five in cloaths, as Strabo observes, lib. 4.

ought to be moderate; but there should be hardly any at all in despotic governments, where women are in some measure slaves.

THE community of goods introduced by the French laws between man and wife, is very well adapted to a monarchical government; because the women are thereby interested in domestic affairs, and compelled, as it were, to take care of their family. It is less so in a republic, where women are possessed of more virtue. But it would be quite absurd in despotic governments, where the women themselves commonly constitute a part of the master's property.

As women are in a state that furnishes sufficient inducements to marriage, the advantages which the law gives them over the husband's property are of no service to society. But in a republic they would be very prejudicial, because riches are productive of luxury. In despotic governments the profits accruing from marriage ought to be mere subsistence, and no more.

CH A P. XVI.

An excellent custom of the Samnites.

THE Samnites had a custom which in so small a republic, and especially in their situation, must have been productive of surprizing effects. The young people were all assembled in one place, and their conduct was examined. He that was declared the best of the whole assembly, had leave given him to take which girl he pleased for his wife; the second best chose after him; and so on *. Admi-

* Fragment of Nicolaus Damascenus, taken from Stobæus, in the collection of Constantine Porphyrogenitus.

able institution! The only recommendation that young men could have on this occasion was their virtue and the services done their country. He who had the greatest share of these endowments chose which girl he liked out of the whole nation. Love, beauty, chastity, virtue, birth, and even wealth itself, were all, in some measure, the dowry of virtue. A nobler, and grander recompence, less chargeable to a petty state, and more capable of influencing both sexes, could hardly be imagined!

THE Samnites were descended from the Lacedæmonians: and Plato, whose institutes are only an improvement of those of Lycurgus, enacted nearly the same law †.

C H A P. XVII.

Of Female Administration.

IT is contrary to reason and nature that women should reign in families, as was customary among the Egyptians; but not that they should govern an empire. In the former case the state of their natural weakness does not allow them to have the pre-eminence; in the latter their very weakness commonly gives them more lenity and moderation, qualifications fitter for a good administration, than roughness and severity.

In the Indies they are very easy under a female government; and it is settled, that if the male issue be not of a mother of the same blood, the females born of a mother of the same blood-royal must suc-

† He even allows them to have a more frequent interview with one another.

ceed *. And then they have a certain number of persons who assist to bear the weight of the government. According to Mr. *Smith*, † they are very easy in Africa under a female administration. If to this we add the example of England and Muscovy, we shall find that they succeed alike both in moderate and despotic governments.

* Edifying Letters, 14th collection.

† Voyage to Guinea, part the second, of the kingdom of Angola on the Golden Coast.





B O O K VIII.

Of the Corruption of the Principles of the three Governments.

C H A P. I.

General Idea of this Book.

THE corruption of this government begins for the most part with that of the principles.

C H A P. II.

Of the Corruption of the Principles of Democracy.

THE principle of democracy is not only corrupted when the spirit of inequality is extinct, but also when they fall into a spirit of extreme equality, and when each citizen would fain be upon a level with those whom he has chosen to command him. Then the people, incapable of bearing the very power they have delegated, want to manage every thing themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges.

WHEN this is the case, virtue can no longer subsist in the republic. The people are desirous of exercising the functions of the magistrates, who then cease to be revered. The deliberations of the

senate are slighted; all respect is then laid aside for the senators, and consequently for old age. If there is no more respect for old age, there will be none presently for parents; deference to husbands will be also thrown off, and submission to masters. This licentiousness will presently become general; and the trouble of command be as fatiguing as that of obedience. Wives, children, slaves, will shake off all subjection. No longer will there be any such thing as manners, order, or virtue.

WE find in the *Banquet of Xenophon*, a very lively description of a republic in which the people abused their equality. Each guest gives in his turn the reason why he is satisfied. *I am content*, says Chamides, *because of my poverty. When I was rich, I was obliged to pay my court to informers, knowing I was more liable to be hurt by them, than capable of doing them harm. The republic always demanded some new tax of me; and I could not decline paying. Since I am grown poor, I have acquired authority; nobody threatens me; I rather threaten others. I can go or stay where I chuse. The rich already rise from their seats and give me the way. I am a king, I was before a slave: I paid taxes to the republic, now it maintains me; I am no longer afraid of losing; but I hope to acquire.*

THE people fall into this misfortune, when those in whom they confide, desirous of concealing their own corruption, endeavour to corrupt them. To disguise their own ambition, they speak to them only of the grandeur of the state; to conceal their own avarice, they continually flatter theirs.

THE corruption will increase among the corrupters, and also among those who are already corrupted. The people will divide the public money a-

among themselves, and having added the administration of affairs to their indolence, will be for blending their poverty with the amusements of luxury. But with their indolence and luxury, nothing but the public treasure will be able to satisfy their demands.

WE must not be astonished to see their suffrages given for money. It is impossible to make great largesses to the people without great extortion: and to compass this, the state must be subverted. The greater the advantages they seem to derive from their liberty, the nearer they approach towards the critical moment of losing it. Petty tyrants arise, who have all the vices of a single tyrant. The small remains of liberty soon become unsupportable; a single tyrant starts up, and the people are stripped of every thing, even of the profits of their corruption.

DEMOCRACY hath therefore two excesses to avoid, the spirit of inequality, which leads to aristocracy or monarchy; and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.

IT is true, that those who corrupted the Greek republics did not always become tyrants. This was because they had a greater passion for eloquence than for the military art. Besides, there reigned an implacable hatred in the breasts of the Greeks against those who subverted a republican government; and for this reason anarchy degenerated into annihilation, instead of being changed into tyranny.

BUT Syracuse, being situated in the midst of a great number of petty states, whose government had

been changed from oligarchy to tyranny *; and being governed by a senate † scarce ever mentioned in history, underwent such calamities as are the consequence of a more than ordinary corruption. This city, ever a prey to licentiousness § or oppression, equally labouring under the sudden and alternate succession of liberty and servitude, and notwithstanding her external strength, constantly determined to a revolution by the least foreign power: This city, I say, had in her bosom a great multitude of people, whose fate it was to have always this cruel alternative, either of chusing a tyrant to govern them, or of acting the tyrant themselves.

CH A P. III.

Of the Spirit of extreme Equality.

AS distant as heaven is from earth, so is the true spirit of equality from that of extreme equality. The former does not imply that every body should command, or that no one should be commanded, but that we obey or command our equals. It endeavours not to shake off the authority of a master, but that its masters should be none but its equals.

* See Plutarch, in the lives of Timoleon and Dio.

† It was that of the six hundred, of whom mention is made by Diodorus.

§ Upon the expulsion of the tyrants, they made citizens of strangers and mercenary troops, which gave rise to civil wars. *Aristot. Polit. lib. 5. cap. 3.* the people having been the occasion of the victory over the Athenians, the republic was changed, *ibid. cap. 4.* The passion of two young magistrates, one of whom carried off the other's boy, and in revenge the other debauched his wife, was attended with a change in the form of this republic. *ibid. lib. 7. cap. 4.*

IN the state of nature indeed, all mankind are born equal; but they cannot remain in this equality. Society makes them lose it, and they recover it only by the protection of the laws.

SUCH is the difference between a well regulated democracy, and one that is not so, that in the former men are equal only as citizens, but in the latter they are equal also as magistrates, as senators, as judges, as fathers, as husbands, or as masters.

THE natural place of virtue is near to liberty; but it is not nearer to excessive liberty than to slavery.

C H A P. IV.

Particular Cause of the Corruption of the People.

GREAT success, especially when chiefly owing to the people, so greatly intoxicates them, that it is impossible to contain them within bounds. Jealous of their magistrates, they soon became jealous also of the magistracy; enemies to those who govern, they soon prove enemies also to the constitution. Thus it was that the victory over the Persians in the straits of Salamis corrupted the republic of Athens*; and thus the defeat of the Athenians destroyed the republic of Syracuse†.

MARSEILLES never experienced those great transitions from lowness to grandeur; this was owing to the prudent conduct of that republic, who ever preserved her principles.

* Aristot, Polit, lib. 5. cap. 4.

† Ibid.

C H A P. V.

Of the Corruption of the Principle of Aristocracy.

ARISTOCRACY is corrupted if the power of the nobles becomes arbitrary: when this is the case, there can no longer be any virtue either in the governors or the governed.

If the reigning families observe the laws, it is a monarchy with several monarchs, and in its own nature one of the most excellent; for most part of these monarchs are tied down by the laws. But when they do not observe them, it is a despotic state swayed by a great many despotic princes.

In the latter case, the republic consists only in the nobles. The body governing is the republic; and the body governed is the despotic state; which forms two of the most heterogeneous bodies in the world.

THE extremity of corruption is when the power of the nobles becomes hereditary*; for then they can hardly have any moderation. If they are only a few, their power is greater, but their security less; if they are a larger number, their power is less, and their security greater: insomuch that power goes on increasing, and security diminishing, up to the very despotic prince, who is encircled with excess of power and danger.

THE greater number therefore of nobles in an hereditary aristocracy renders the government less violent: but as there is less virtue, they fall into a

* The aristocracy is changed into an oligarchy.

spirit of supineness and negligence, which strips the state of all its power and activity*.

AN aristocracy may maintain the full vigour of its constitution, if the laws be such as are apt to render the nobles more sensible of the dangers and fatigues, than of the pleasure of command: and if the government be in such a situation as to have something to dread, while security shelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and stability of monarchies, republics on the other hand must have something to dread †. A fear of the Persians supported the laws of Greece. Carthage and Rome were alarmed, and strengthened by each other. Strange, that the greater security those states enjoyed, the more, like stagnated waters, they were subject to corruption!

CH A P. VI.

Of the Corruption of the Principle of Monarchy.

AS democracies are subverted when the people despoil the senate, the magistrates, and judges of their functions; so monarchies are corrupted when the sovereign insensibly deprives societies or cities of their privileges. In the former case the multitude usurp the power, in the latter it is usurped by a single person.

* Venice is one of those republics that has enacted the best law for correcting the inconveniencies of an hereditary aristocracy.

† Justin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no farther emulation, they spent their revenues in feasts, *frequentius cenam, quam castra viscentes*. Then it was that the Macedonians emerged from obscurity. l. 6.

The destruction of the Dynasties of Tsin and Soui, says a Chinese author, was owing to this; the princes, instead of confining themselves like their ancestors to a general inspection, the only one worthy of a monarch, wanted to govern every thing immediately by themselves †.

THE Chinese author gives us in this instance the cause of the corruption of almost all monarchies.

MONARCHY is destroyed, when a prince thinks he shews a greater exertion of power in changing than in conforming to, the order of things; when he deprives some of his subjects of their hereditary employments to bestow them arbitrarily upon others; and when he is fonder of being guided by fancy than judgment.

AGAIN, it is destroyed, when the sovereign directing every thing entirely to himself, calls the state to his capital, the capital to his court, and the court to his own person.

IN a word, it is destroyed, when the prince mistakes his authority, his situation, and the love of his people; and when he is not fully persuaded that a monarch ought to think himself secure, as a despotic prince ought to think himself in danger.

C H A P. VII.

Continuation of the same Subject.

THE principle of monarchy is corrupted, when the first dignities are marks of the first servitude, when the great men are deprived of pub-

† Complément of works made under the Mings, related by father Du Halde.

lic respect, and rendered the low tools of arbitrary power.

It is still more corrupted, when honour is set up in contradiction to honours, and when men are capable of being loaded at the very same time with infamy* and with dignities.

It is corrupted when the sovereign changes his justice into severity; when he puts, like the Roman emperors, a Medusa's head on his breast †; and when he assumes that threatening and terrible air which Commodus ordered to be given to his statues §.

AGAIN, it is corrupted, when mean and abject souls grow vain of the pomp attending their servitude; and imagine that the motive which induces them to be entirely devoted to their prince frees them from all duty to their country.

BUT if it be true, (and indeed the experience of all ages has shewn it) that in proportion as the power of the monarch become boundless and immense, his security diminishes; is the corrupting of this power, and the altering of its very nature, a less crime than that of high-treason against the sovereign?

* Under the reign of Tiberius, statues were erected to, and triumphal ornaments conferred on, informers; which so greatly debased these honours, that those who had really deserved them disdained to accept of them. *Frag. of Dio, book 38.* taken from the *extrofit of virtues and vices*, by Constantine Porphyrog. See in Tacitus in what manner Nero, on the discovery and punishment of a pretended conspiracy, bestowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal. book 14.* See also how the generals refused to serve, because they despised the military honours *pervulgat is triumphis insignibus.* Tacit. *Annal. book 13.*

† In this state the Prince knew extremely well the principle of his government.

§ Herodian

C H A P. VIII.

Danger of the Corruption of the Principle of monarchical Government.

THE danger is not when the state passes from one moderate government to another, as from a republic to a monarchy, or from a monarchy to a republic; but when it precipitates from a moderate to a despotic government.

MOST of the European nations are still governed by the principles of morality. But if from a long abuse of power, or the fury of conquest, despotic sway should prevail to a certain degree; neither morals nor climate would be able to withstand its baleful influence: and then human nature would be exposed for some time at least, even in this beautiful part of the universe, to the insults with which she has been abused in the other three.

C H A P. IX.

How ready the Nobility are to defend the Throne.

THE nobility of England buried themselves with Charles I. under the ruins of the throne; and before that time, when Philip II. endeavoured to tempt the French with the allurements of liberty, the crown was always supported by a nobility who think it an honour to obey a king, but look upon it as the lowest disgrace to share the power with the people.

THE house of Austria has ever used her endeavours to oppress the Hungarian nobility; little i-

imagining how serviceable that very nobility would be one day to her. She would fain have drained their country of money, of which they had no plenty; but took no notice of the men, with whom it abounded. When princes combined to dismember her dominions, the several parts of that monarchy fell motionless, as it were, one upon another. No life was then to be seen but in those very nobles, who resenting the affronts offered to the monarch, and forgetting the injuries done to themselves, took up arms to avenge her cause, and considered it as the greatest glory bravely to die and to forgive.

C H A P. X.

Of the Corruption of the Principle of despotic Government.

THE principle of despotic government is subject to a continual corruption, because it is even in its nature corrupt. Other governments are ruined by particular accidents, which do violence to the principles of each constitution; this is destroyed by its own intrinsic imperfections, when some accidental causes do not prevent the corrupting of its principles. It maintains itself therefore only when circumstances drawn from the climate, religion, situation, or genius of the people, oblige it to conform to order, and to admit of some rule. By these things its nature is forced without being changed; its ferocity remains; and it is rendered tame and tractable only for a time.

CHAP. XI.

Natural Effects of the Goodness and Corruption of the Principles of Government.

WHEN once the principles of government are corrupted, the very best laws become bad, and turn against the state: but when the principles are sound, even bad laws have the same effect as good; the force of the principle draws every thing to it.

THE Cretans used a very singular method to keep the principal magistrates dependent on the laws; which was that of *Insurrection*. Part of the citizens rose up in arms †, routed the magistrates, and obliged them to return to a private life. This was supposed to be done in consequence of the law. One would have imagined that an institution of this kind, which established sedition, to hinder the abuse of power, would have subverted any republic whatsoever; and yet it did not subvert that of Crete. The reason is this*.

WHEN the ancients would express a people that had the strongest affection for their country, they were sure to mention the inhabitants of Crete: *Our country*, said Plato § *a name so dear to the Cretans*. They called it by a name which signifies the love of a mother for her children ¶. Now the love of our country sets every thing to right.

† Aristot. Polit. book 2. chap. 10.

* They always united immediately against foreign enemies, which was called *Syncretism*. Flut. mor. p. 88.

§ Repub. lib. 9.

¶ Plutarch's morals, treatise whether a man advanced in years ought to meddle with public affairs.

THE laws of Poland have also their *insurrections*. But the inconveniencies thence arising plainly shew that the people of Crete alone were capable of using such a remedy with success.

THE gymnical exercises established amongst the Greeks had the same dependance on the goodness of the principle of government. *It was the Lacedaemonians and Cretans*, said Plato ¶, *that opened those famous academies which gave them so eminent a rank in the world. Modesty at first was alarmed; but it yielded to the public utility.* In Plato's time these institutions were admirable†; as they had a relation to a very important object, which was the military art. But when virtue fled from Greece, the military art was destroyed by these institutions; people appeared then on the arena, not for improvement, but for debauch*.

PLUTARCH informs us‡ that the Romans in his time were of opinion, that those games had been the principal cause of the slavery into which the Greeks were fallen. On the contrary, it was the slavery of the Greeks that corrupted those exercises. In Plutarch's time §, their fighting naked in the

¶ Repub. lib. 5.

† The Gymnical art was divided into two parts, *dancing and wrestling*. In Crete they had the armed dances of the Curetes; at Sparta they had those of Castor and Pollux; at Athens the armed dances of Pallas, which were very proper for those that were not yet of age for military service. Wrestling is the image of war, said Plato, *of laws, book 7.* He commends antiquity for having established only two dances, the *Lacetic* and the *Pyrric*. See how the latter dance was applied to the military art, *Plato, ibid.*

••••• *Aut libidinis*

Lacedaemonis palastras.

Mart. lib. 4 ep. 55.

§ Plutarch's morals, in the treatise entitled *Questions concerning the affairs of the Romans.*

¶ *Ibid.*

parks, and their wrestling, infected the young people with the spirit of cowardice, inclined them to infamous passions, and made them mere dancers. But under Epaminondas the exercise of wrestling made the Thebans gain the famous battle of Leuctra†.

THERE are few laws which are not good, while the state retains its principles: here I may apply what Epicurus said of riches; *it is not the liquor, but the vessel, that is corrupted.*

CH A P. XII.

The same Subject continued.

THE judges were chosen at first from the order of senators, at Rome. This privilege the Gracchi transferred to the knights: Drusus gave it to the senators and knights; Sylla to the senators only; Cotta to the senators, knights, and public treasurers; Cæsar excluded the latter; Antony made decuries of senators, knights, and centurions.

WHEN once a republic is corrupted, there is no possibility of remedying any of the growing evils, but by removing the corruption, and restoring its lost principles: every other correction is either useless or a new evil. While Rome preserved her principles intire, the judicial power might without any abuse be lodged in the hands of senators: but as soon as this city became corrupt, to whatsoever body that power was transferred, whether to the senate, to the knights, to the treasurers, to two of those bodies, to all three together, or to any other;

† Plutarch's morals, *Table propositions*, book 2.

matters still went wrong. The knights had no more virtue than the senate, the treasurers no more than the knights, and these as little as the centurions.

AFTER the Roman citizens had obtained the privilege of sharing the magistracy with the Patricians, it was natural to think that their flatterers would immediately become arbiters of the government. But no such thing ever happened.—It was observable that the very people who had rendered the plebeians capable of public offices, always fixed their choice upon the patricians. Because they were virtuous, they were magnanimous; and because they were free, they had a contempt of power. But when their morals were corrupted, the more power they were possessed of, the less prudent was their conduct; till at length upon becoming their own tyrants and slaves, they lost the strength of liberty, to fall into the weakness and impotency of licentiousness.

CHAP. XIII.

The Effect of an Oath among virtuous People.

THERE is no nation, says Livy †, that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer respected.

AN Oath had such influence among those people, that nothing bound them stronger to the laws. They often did more for the observance of an oath, than they would ever have performed for the thirst of glory or for the love of their country.

† Book 2.

WHEN Quintus Cincinnatus the consul wanted to raise an army in the city against the *Æqui* and the *Volsi*, the tribunes opposed him. *Well*, said he, *let all those who have taken an oath to the Consul of the preceding year march under my banner* §. To no purpose did the tribunes cry out that this oath was no longer binding; and that when they took it, Quintus was but a private person: the people were more religious than those who pretended to direct them; they would not listen to the distinctions or equivocations of the tribunes.

WHEN the same people thought of retiring to the *Sacred Mount*, they felt some remorse from the oath they had taken to the Consuls, that they would follow them into the field †. They entered then into a design of murdering the Consuls; but dropped it, when they were given to understand that their oath would still be binding. Now it is easy to judge of the notion they entertained of the violation of an oath, from the crime they intended to commit.

AFTER the battle of Cannæ, the people were seized with such a panic, that they would fain have retired to Sicily. But Scipio having prevailed upon them to swear they would not stir from Rome, the fear of violating this oath surpassed all other apprehensions. Rome was a ship held by two anchors, religion and morality, in the midst of a furious tempest.

§ Livy, Book 3. † Ibid. Book 3.

C H A P. XIV.

How the smallest Change of the Constitution is attended with the Ruin of its Principles.

ARISTOTLE mentions the city of Carthage as a well regulated republic. Polybius tells us*, that there was this inconveniency at Carthage in the second Punic war, that the senate had lost almost all their authority. Livy informs us, that when Hannibal returned to Carthage, he found that the magistrates and the principal citizens had abused their power, and converted the public revenues to their private emolument. The virtue therefore of the magistrates, and the authority of the senate, both fell at the same time; and all was owing to the same cause.

No one is ignorant of the surprising effects of the censorship among the Romans. There was a time when it grew burthensome; but still it was supported, because there was more luxury than corruption. Claudius † weakened its authority, by which means the corruption became greater than the luxury, and the censorship dwindled away of itself*. After various interruptions and resurrections, it was intirely laid aside till it became quite useless, that is, till the reigns of Augustus and Claudius.

* See Book 11th. chap. 12th.

† About a hundred years after.

* See Dio, book 38. Cicero's life in Plutarch, Cicero to Atticus, Book 4th, Letter 10 and 15. Asconius on Cicero de divinatione.

C H A P. XV.

Sure Methods of preserving the three Principles.

I Shall not be able to make myself rightly understood, till the reader has perused the four subsequent chapters.

C H A P. XVI.

Distinctive Properties of a Republic.

IT is natural for a republic to have only a small territory; otherwise it cannot long subsist. In an extensive republic there are men of immense fortunes, and consequently of less moderation; there are trusts too considerable to be placed in any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country.

IN an extensive republic the public good is sacrificed to numberless private views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and consequently are less protected.

THE long duration of the republic of Lacedæmon was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.

It was the spirit of the Greek republics to be as contented with their territories as with their laws. Athens was first fired with ambition and gave it to Sparta; but it was an ambition rather of commanding a free people, than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of monarchy, a government whose spirit is more turned to increase of dominion.

EXCEPTING particular circumstances*, it is difficult for any other than a republican government to subsist long in a single town. A prince of so petty a state would naturally endeavour to oppress his subjects, because his power would be great, while the means of enjoying it or of causing it to be respected, would be inconsiderable. The consequence is, he would trample upon his people. On the contrary, such a prince might be easily crushed by a foreign or even a domestic force; the people might every instant unite and rise up against him. Now as soon as the sovereign of a single town is expelled, the quarrel is over; but if he has many towns, it only begins.

CHAP. XVII.

Distinctive Properties of a Monarchy.

A Monarchical state ought to be of a moderate extent. Were it small, it would form itself into a republic: were it very large, the nobility, possessed of great estates, far from the eye of the

* As when a petty sovereign supports himself betwixt two great powers by means of their mutual jealousy; but then he has only a precarious existence.

monarch, with a private court of their own, and secure moreover from sudden executions by the laws and manners of the country, such a nobility, I say, might throw off their allegiance, having nothing to fear from too slow and too distant a punishment.

THUS Charlemain had scarce founded his empire when he was obliged to divide it; whether the governors of the provinces refused to obey; or whether, in order to keep them more under subjection, there was a necessity of parcelling the empire into several kingdoms.

AFTER the death of Alexander his empire was divided. How was it possible for those Greek and Macedonian chiefs to obey, who were each of them free and independent, or commanders at least of the victorious bands dispersed throughout that vast extent of conquered land?

ATTILA's empire was dissolved soon after his death; such a number of kings, who were no longer under restraint, could not resume their fetters.

THE sudden establishment of unlimited power is a remedy, which in those cases may prevent a dissolution: but how fatal the remedy, which after the enlargement of dominion opens a new scene of misery!

THE rivers hasten to mingle their waters with the sea; and monarchies lose themselves in despotic power.

C H A P. XVIII.

Particular case of the Spanish Monarchy.

LET not the example of Spain be produced against me; it rather proves what I affirm. To preserve America she did what even despotic power itself does not attempt, she destroyed the inhabitants. To preserve her colony, she was obliged to keep it dependent even for its subsistence.

IN the Netherlands, she endeavoured to render herself arbitrary; and as soon as she abandoned the attempt, her perplexity increased. On the one hand the Walloons would not be governed by Spaniards; and on the other, the Spanish soldiers refused to submit to Walloon officers†.

IN Italy she maintained her ground, merely by exhausting herself and by enriching that country. For those who would have been pleased to have got rid of the king of Spain, were not in a humour to refuse its gold.

C H A P. XIX.

Distinctive Properties of a despotic Government.

AN extensive empire supposes a despotic authority in the person who governs. It is necessary that the quickness of the prince's resolutions should supply the distance of the places they are sent to; that fear should prevent the remissness of the distant governor or magistrate; that the law should be derived from a single person, and should shift

† See the history of the United Provinces, by Monf. Le Clerc.

continually, according to the accidents which continually multiply in a state in proportion to its extent.

CH A P. XX.

Consequence of the preceding Chapters.

IF it be therefore the natural property of small states to be governed as a republic, of middling ones to be subject to a monarch, and of large empires to be swayed by a despotic prince; the consequence is, that in order to preserve the principles of the established government, the state must be supported in the extent it has acquired, and that the spirit of this state will alter in proportion as it contracts or extends its limits.

CH A P. XXI.

Of the Empire of China.

BEFORE I finish this book, I shall answer an objection that may be made to the foregoing doctrine.

OUR missionaries inform us that the government of the large empire of China is admirable, and that it has a proper mixture of fear, honour, and virtue. Consequently I must have given an idle distinction, in establishing the principles of the three governments.

BUT I cannot imagine what this honour can be among a people, who act only through fear of being bastinadoed*.

* It is the cudgel that governs China, says father Du Halde.

AGAIN, our merchants are far from giving us any such accounts of the virtue so much talked of by the missionaries; we need only consult them in relation to the robberies and extortions of the Mandarines†. I also appeal to another unexceptionable witness, the great lord Anson.

BESIDES, Father *Parennin's* letters concerning the emperor's proceedings against some of the princes of the blood § who had incurred his displeasure by their conversion, plainly shew us a settled plan of tyranny, and barbarities committed by rule, that is, in cold blood.

WE have also Monsieur *de Mairan's*, and the same Father *Parennin's* letters on the government of China. I find therefore that after a few proper questions and answers, the whole mystery is unfolded.

MIGHT not our missionaries have been deceived by an appearance of order? Might not they have been struck with that constant exercise of a single person's will, an exercise by which they themselves are governed, and which they are so pleased to find in the courts of the Indian princes; because as they go thither only in order to introduce great changes, it is much easier to persuade those princes that there are no bounds to their power, than to convince the people that there are none to their submission*.

In short, there is frequently some kind of truth even

† Among others, *De Lange's* relation.

§ Of the Family of Sourniama, Edifying Letters, 18th collection.

* See in Father Du Halde how the missionaries availed themselves of the authority of Canhi to silence the Mandarines, who constantly declared, that by the laws of the country, no foreign worship could be established in the empire.

in errors themselves. It may be owing to particular, and perhaps very surprising circumstances, that the Chinese government is not so corrupt as one might naturally expect. The climate and some other physical cases may, in that country, have had so strong an influence on their morals, as in some measure to produce wonders.

THE climate of China is amazingly favourable to the propagation of the human species. The women are the most prolific in the whole world. The most barbarous tyranny can put no stop to the progress of propagation. The prince cannot say there like Pharaoh, *Let us deal wisely with them lest they multiply*. He would be rather reduced to Nero's wish, that mankind had all but one head. In spite of tyranny, China, by the force of its climate, will be always populous, and triumph over the tyrannical oppressor.

CHINA, like all other countries, that live chiefly upon rice, is subject to frequent famines. When the people are ready to starve, they disperse in order to seek for nourishment; in consequence of which, gangs of robbers are formed on every side. Most of them are extirpated in their very infancy; others swell, and are also suppressed. And yet in so great a number of such distant provinces, some band or other may happen to meet with success. In that case they maintain their ground, strengthen their party, form themselves into a military body, march up to the capital, and crown their leader.

FROM the very nature of things, a bad administration is here immediately punished. The want of subsistence in so populous a country produces sudden disorders. The reason why the redress of abuses in other countries is attended with such dif-

ficulty is, because their effects are not immediately felt; the prince is not informed in so sudden and sensible a manner as in China.

THE emperor of China is not taught like our princes, that if he governs ill, he will not be so happy in the other life, nor so powerful and wealthy in this. He knows that if his government be not just, he will be stript both of empire and life.

As China, notwithstanding the exposing of children *, grows daily more populous, the inhabitants are incessantly employed in tilling the lands for their subsistence. This requires a very surprising attention in the government. It is their perpetual concern that every man should have it in his power to work, without the least dread of being deprived of the fruits of his labour. Consequently this is not so much a civil as a domestic government.

SUCH has been the origin of those regulations which have been so greatly extolled. They wanted to make the laws reign in conjunction with despotic power; but whatever is joined to the latter loses all its force. In vain did this arbitrary sway, labouring under its own inconveniencies, desire to be fettered; it armed itself with its chains, and is become still more terrible.

CHINA is therefore a despotic state, whose principle is fear. Perhaps in the earliest dynasties, when the empire was not so extensive, the government might have deviated a little from this spirit: but at present the case is quite different.

* See the order of Tsongton, for tilling the land, in the Edifying Letters, 4th coll. 8th.

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B O O K IX.

Of Laws in the relation they bear to a defensive Force.

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C H A P. I.

In what manner Republics provide for their Safety.

IF a republic be small, it is ruined by a foreign force; if it be large, it is destroyed by an internal imperfection.

DEMOCRACIES and Aristocracies are equally liable to this twofold inconveniency, whether they be good or bad. The evil is in the very thing itself; and no form can redress it.

It is therefore very probable that mankind would have been, at length, obliged to live continually under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean a confederate republic.

THIS form of government is a convention by which several petty states agree to become members of a larger one, which they intend to establish. It is a sort of assemblage of societies, that constitute a new one, capable of increasing by means of farther associations, till they arrive to such a degree of power, as to be able to provide for the security of the whole body.

It was these associations that so long contributed

to the prosperity of Greece. By these the Romans attacked the whole universe, and by these alone the whole globe withstood them: for when Rome was arrived to the highest pitch of grandeur, it was the associations beyond the Danube and the Rhine, associations formed by the terror of her arms, that enabled the Barbarians to resist her.

FROM hence it proceeds that Holland*, Germany, and the Swiss cantons, are considered in Europe as perpetual republics.

FORMERLY the associations of cities were more necessary than at present. A weak defenceless town was exposed to greater danger. By conquest it was deprived not only of the executive and legislative power, as in our days, but likewise of all human property†.

SUCH a republic, able to withstand an external force, may support itself without any internal corruption; the form of this society prevents all manner of inconveniencies.

If a single member should attempt to usurp the supreme power, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great an influence over one, this would alarm the rest; were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped, and overpower him before he could be settled in his usurpation.

SHOULD a popular insurrection happen in one of the confederate states, the others are able to quell

* It is composed of about fifty different republics, all different from one another. *State of the United Provinces* by M. Janisson.

† Civil liberty, goods, wives, children, temples, and even burying places.

it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

As this government is composed of petty republics, it enjoys the internal happiness of each; and with regard to its external situation, by means of the association, it possesseth all the advantages of extensive monarchies.

CH. A P. II.

That a confederate Government ought to be composed of States of the same Nature, particularly of the republican kind.

THE Canaanites were destroyed, because they were petty monarchies, that had no union nor confederacy for their common defence: And indeed a confederacy is not agreeable to the nature of petty monarchies.

As the confederate republic of Germany consists of free cities, and of petty states subject to different princes, experience shews us, that it is much more imperfect than that of Holland and Switzerland.

THE spirit of monarchy is war and enlargement of dominion: peace and moderation is the spirit of a republic. These two kinds of government cannot naturally subsist in a confederate republic.

THUS we observe in the Roman history, that when the Veientes had chosen a king, they were immediately forsaken by all the other petty republics of Tuscany. Greece was undone as soon as the

kings of Macedon obtained a seat among the Amphictyons.

THE confederate republic of Germany, composed of princes and free towns, subsists by means of a chief, who is, in some respects, the magistrate of the union, in others, the monarch.

CHAP. III.

Other Requisites in a confederate Republic.

IN the republic of Holland one province cannot conclude an alliance without the consent of the others. This law, which is an excellent one, and even necessary in a confederate republic, is wanting in the Germanic constitution, where it would prevent the misfortunes that may happen to the whole confederacy, through the imprudence, ambition, or avarice of a single member. A republic united by a political confederacy, has given itself intirely up, and has nothing more to resign.

It is difficult for the united states to be all of equal power and extent. The Lycian § republic was an association of twenty-three towns; the large ones had three votes in the common council, the middling ones two, and the small towns one. The Dutch republic consists of seven provinces of different extent of territory, which have each one voice.

THE cities of Lycia † contributed to the expences of the state, according to the proportion of suffrages. The provinces of the united Netherlands cannot follow this proportion; they must be directed by that of their power.

§ Strabo, lib. 14.

† Ibid.

IN Lycia & the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia.

CH A P. IV.

In what manner despotic Governments provide for their security.

AS republics provide for their security by uniting, despotic governments do it by separating, and by keeping themselves, as it were, single. They sacrifice a part of the country; and by ravaging and laying waste the frontiers, they render the heart of the empire inaccessible.

IT is a received axiom in geometry, that the greater the extent of bodies, the more their circumference is relatively small. This practice therefore of laying the frontiers waste is more tolerable in large than in middling states.

A DESPOTIC government does all the mischief to itself that could be committed by a cruel enemy, whose arms it were unable to resist.

IT also preserves itself by another kind of separation, which is by putting the most distant provinces into the hands of a great vassal. The Mogul, the king of Persia, and the emperors of China, have their feudatories; and the Turks have found their account in putting the Tartars, the

Moldavians, the Walachians, and formerly the Transilvanians, between themselves and their enemies.

C H A P. V.

In what Manner a Monarchical Government provides for its Security.

A MONARCHY never destroys itself like a despotic government. But a kingdom of a moderate extent is liable to sudden invasions: it must therefore have fortresses to defend its frontiers; and troops to garrison those fortresses. The least spot of ground is disputed with military skill and resolution. Despotic states make incursions against one another; it is monarchies only that wage war.

FORTRESSES are proper for monarchies; despotic governments are afraid of them. They dare not intrust their officers with such a command, as none of them have any affection for the sovereign or his government.

C H A P. VI.

Of the defensive Force of States in general.

TO preserve a state in its due force, it must have such an extent, as to admit of a proportion between the celerity with which it may be invaded, and that with which it may defeat the invasion. As an invader may appear on every side, it is requisite that the state should be able to defend itself on every side; consequently it should be of a moderate extent, proportioned to the de-

gree of velocity that nature has given to man, to enable him to move from one place to another.

FRANCE and Spain are exactly of a proper extent. They have so easy a communication for their forces, as to be able to convey them immediately to what part they please; the armies unite and pass with rapidity from one frontier to another, without any fear of such difficulties as require time to remove.

IT is very happy for France, that the capital stands near to the different frontiers in proportion to their weakness; and the prince has a better view of each part of his country according as it is more exposed.

BUT when an extensive empire, like Persia, is attacked, it is several months before the troops are assembled in a body; and then they are not able to make such forced marches for that space of time, as they could for fifteen days. Should the army on the frontiers be defeated, it is soon dispersed, because there is no neighbouring place of retreat. The victor, meeting with no resistance, advances with all expedition, sits down before the capital, and lays siege to it, when there is scarce time sufficient to summon the governors of the provinces to its relief. Those who foresee an approaching revolution, hasten it by their disobedience. For men whose fidelity is entirely owing to the danger of punishment are easily corrupted as soon as it becomes distant; their aim is their own private interest. The empire is subverted, the capital taken, and the conqueror disputes the several provinces with the governors.

A MONARCH's real power does not consist so much in the facility he meets with in making

conquests, as in the difficulty an enemy finds in attacking him, and, if I may so speak, in the immutability of his condition. But the increase of territory obliges a government to lay itself more open to an enemy.

As sovereigns therefore ought to be endued with wisdom in order to increase their power, they ought also to have an equal share of prudence to confine it within bounds. Upon removing the inconveniencies of too small a territory, they should continually have their eye on the inconveniencies which attend its extent.

C H A P. VII.

Reflexions.

THE enemies of a great prince, whose reign was protracted to an unusual length, have frequently accused him, rather, I believe, from their own fears, than upon any solid foundation, of having formed and carried on a project of universal monarchy. Had he attained his aim, nothing would have been more fatal to his subjects, to himself, to his family, and to all Europe. Heaven, that knows our true interests, favoured him more by preventing the success of his arms, than it could have done by rendering him victorious. Instead of raising him to be the only sovereign in Europe, it made him happier by rendering him the most powerful.

THE subjects of this prince, who in travelling abroad, are never affected but with what they have left at home; who on leaving their own habitations, look upon glory as their chief object, and in

distant countries as an obstacle to their return; who disgust you even by their good qualities, because they are tainted with so much vanity; who are capable of supporting wounds, perils, and fatigues, but not of foregoing their pleasures; who are extremely fond of gaiety, and comfort themselves for the loss of a battle by a song upon the general; those subjects, I say, would never have the solidity requisite for an enterprize of this nature, which if defeated in one country, would be unsuccessful every where else; and if once unsuccessful, would always be so.

C H A'P. VIII.

A particular Case, in which the defensive Power of a State is inferior to the offensive.

IT was a saying of the lord of *Coucy* to king Charles V. *that the English are never weaker, nor easier subdued than in their own country.* The same was observed of the Romans; the same of the Carthaginians; and the same will happen to every power that sends armies to distant countries, in order to reunite, by discipline and military power, those who are divided among themselves by political or civil interests. The state finds itself weakened by the disorder that still continues, and more so by the remedy.

THE lord of *Coucy's* maxim is an exception to the general rule, which disapproves of wars against distant countries. And this exception also confirms the rule, because it takes place only with respect to those by whom such wars are undertaken.

C H A P. IX.

Of the relative Power of States.

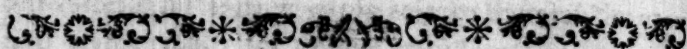
ALL grandeur, force, and power are relative. Care therefore must be taken that in endeavouring to increase the real grandeur, the relative be not diminished.

UNDER the reign of Lewis XIV. France was at its highest pitch of relative grandeur. Germany had not yet produced such mighty princes as have since appeared in that country. Italy was in the same case. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Castile; the distant branches of the Spanish monarchy were weakened by it, and weakened it in their turn; and Muscovy was as little known in Europe, as Crim Tartary.

C H A P. X.

Of the Weakness of neighbouring States.

WHENSOEVER a state lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the destruction of the latter, because this is the happiest situation imaginable; nothing being so convenient as for one prince to be near another, who receives for him all the rebuffs and insults of fortune. And it seldom happens, that by conquering such a state, the real power of the conqueror is as much augmented, as the relative is diminished.



B O O K X.

Of Laws in the Relation they bear to offensive Force.

C H A P. I.

Of offensive Force.

OFFENSIVE force is regulated by the law of nations, which is the political law of each country considered in its relation to every other.

C H A P. II.

Of War.

THE life of governments is like that of man. The latter has a right to kill in case of natural defence; the former have a right to wage war for their own preservation.

I HAVE a right to kill in the case of natural defence, because my life is in respect to me what the life of my antagonist is to him: in the same manner a state wages war, because its preservation is like that of any other being.

WITH individuals the right of natural defence does not imply a necessity of attacking. Instead of attacking they need only have recourse to proper tribunals. They cannot therefore exercise that right of defence, but in sudden cases, when immediate death would be the consequence of waiting for the

assistance of the law. But with states the right of natural defence carries along with it sometimes the necessity of attacking; as for instance, when one nation sees that a continuance of peace will enable another to destroy her, and that to attack that nation instantly is the only way to prevent her own ruin.

FROM thence it follows, that petty states have oftener a right to declare war than great ones, because they are oftener in the case of being afraid of destruction.

THE right therefore of war is derived from necessity and strict justice. If those who direct the conscience or councils of princes do not abide by this maxim, the consequence is fatal: when they proceed on arbitrary principles of glory, convenience, and utility; torrents of blood must overspread the earth.

BUT above all, let them not plead such an idle pretext as the glory of the sovereign: his glory is nothing but pride; it is a passion and not a legitimate right.

IT is true the fame of his power might increase the strength of his government; but it might be equally increased by the reputation of his justice.

CH A P. III.

Of the Right of Conquest.

FROM the right of war comes that of conquest; which is the consequence of that right, and ought therefore to follow its spirit.

THE right the conqueror has over a conquered people is directed by four kinds of laws, the law of

nature, which makes every thing tend to the preservation of the species; the law of natural reason, which teaches us to do to others what we would have done to ourselves; the law that forms political societies, whose duration nature has not limited, and, in short, the law derived from the nature of the thing itself. Conquest is an acquisition, and carries with it the spirit of preservation and use, not of destruction.

THE inhabitants of a vanquished country are treated by the conqueror one of the four following ways. Either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government; or he gives them new political and civil government; or he destroys and disperses the society; or, in a word, he exterminates the people.

THE first way is agreeable to the law of nations now followed; the fourth is more conformable to the law of nations followed by the Romans: in respect to which I leave the reader to judge how far we have improved upon the ancients. We must give due commendations to our modern refinements in reason, religion, philosophy, and manners.

THE authors of our public law guided by ancient histories, without confining themselves to cases of strict necessity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by supposing the conquerors to be invested with I know not what right to kill: from thence they have drawn consequences as terrible as the very principle, and established maxims which the conquerors themselves, when possessed of the least grain of sense, never presumed to follow. It is

a plain case that when the conquest is compleated, the conqueror has no longer a right to kill, because he has no longer the plea for natural defence and self-preservation.

WHAT has led them into this mistake is, that they imagined a conqueror had a right to ruin the state; from whence they inferred that he had a right to ruin the men that compose it; a wrong consequence from a false principle. Far from the destruction of the state it does not at all follow, that the people who compose it ought to be also destroyed. The state is the association of men, and not the men themselves; the citizen may perish, and the man remain.

FROM the right of killing in the case of conquest, politicians have drawn that of reducing to slavery; a consequence as badly grounded as the principle.

THERE is no such thing as a right of reducing people to slavery, but when it becomes necessary for the preservation of the conquest. Preservation, and not servitude, is the end of conquest; though servitude may happen sometimes to be a necessary means of preservation.

EVEN in that case it is contrary to the nature of things that the slavery should be perpetual. The people enslaved ought to be rendered capable of becoming subjects. Slavery in conquests is an accidental thing. When after the expiration of a certain space of time all the parts of the conquering state are connected with the conquered nation, by custom, marriages, laws, associations, and by a certain conformity of disposition; there ought to be an end of the slavery. For the rights of the conqueror are founded solely on the opposition be-

tween the two nations in these very articles, whence prejudices arise, and the want of mutual confidence.

A CONQUEROR therefore who reduces the conquered people to slavery, ought always to reserve to himself the means (for innumerable means there are) of restoring them to their liberty.

THESE are far from being vague and uncertain notions. Thus our ancestors acted, those ancestors who subdued the Roman empire. The laws they made in the heat and transport of passion and in the insolence of victory, were gradually softened; those laws were at first severe, but were afterwards rendered impartial. The Burgundians, Goths, and Lombards, would have the Romans continue a vanquished people; but the laws of *Euric*, *Gundebald*, and *Rotharis*, made the Romans and Barbarians fellow citizens ¹.

CHARLEMAIN, to tame the Saxons, deprived them of their liberty and property. Lewis le Debonnaire made them a free people ², and this was one of the most prudent regulations during his whole reign. Time and servitude had softened their manners, and they ever after faithfully adhered to him.

¹ See the Code of Barbarian laws.

² See the anonymous author of the life of Lewis le Debonnaire, in Dûchesne's collection, tom. 2. p. 269.

C H A P. IV.

Some advantages of a vanquished people.

INSTEAD of inferring such destructive consequences from the right of conquest, much better would it have been for politicians to mention the advantages which this very right may sometimes give to a vanquished people; advantages which would be more sensibly, and more universally experienced, were our law of nations exactly followed, and established through all the universe.

CONQUERED countries are, generally speaking, degenerated from their original institution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppressive. Who can question but such a state would be a gainer, and derive some advantages from the very conquest itself, if it did not prove destructive? When a government is arrived to that degree of corruption as to be incapable of reforming itself, it would not lose much by being new moulded. A conqueror who enters triumphant into a country, where the moneyed men have by a variety of artifices insensibly arrived at numberless ways of encroaching on the public; where the miserable people, who see abuses grown into laws, are ready to sink under the weight of oppression, yet think they have no right to apply for redress; a conqueror, I say, may make a total change, and then the tyranny of those wretches will be the first thing exposed to his resentment.

WE have seen, for instance, countries oppressed by the farmers of the revenues, and eased after-

wards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuses have been often redressed without any interposition of the conqueror.

SOMETIMES the frugality of a conquering nation has enabled them to allow the conquered those necessaries, of which they had been deprived under a lawful prince.

A CONQUEST may destroy pernicious prejudices, and lay, if I may presume to use the expression, the nation under a better genius.

WHAT good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they filled their heads with a frantic superstition. They might have set slaves at liberty; they made free men slaves. They might have undeceived them in respect to the abuse of human sacrifices; instead of that they destroyed them. I should never be done, were I to recount all the good they might have done, and all the mischief they committed.

IT is a conqueror's business to repair a part of the mischief he has occasioned. I therefore define the right of conquest thus: a necessary, lawful, but unhappy power, which leaves the conqueror under a heavy obligation of repairing the injuries done to humanity.

CHAP. V.

Gelon, King of Syracuse.

THE most excellent treaty of peace ever mentioned in history is, in my opinion, that which Gelon made with the Carthaginians. He

insisted upon their abolishing the custom of sacrificing their children *. Excellent indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves, or rather he stipulated in favour of human nature.

THE Bactrians exposed their aged fathers to be torn to pieces by huge bull-dogs: a custom suppressed by Alexander †, whereby he obtained a signal triumph over superstition.

C H A P. VI.

Of Conquests made by a Republic.

IT is contrary to the nature of things, that in a confederate government one state should make any conquest over another, as in our days we have seen in Switzerland ‡. In mixt confederate republics, where the association is between petty republics and monarchies, of a small extent, this is not so absurd.

It is also contrary to the nature of things, that a democratical republic should conquer towns, which cannot enter into the sphere of its democracy. It is necessary that the vanquished people should be capable of enjoying the privileges of sovereignty, as was settled in the very beginning among the Romans. The conquest ought to be limited to the number of citizens fixt for the democracy.

If a democratical republic conquers a nation in

* See M. Barbeyrac's collection, Art. 112.

† Strabo, lib. 2.

‡ With regard to Tockenburgh.

order to govern them as subjects, it exposes its own liberty; because it intrusts too great a power to those who are appointed to the command of the conquered provinces.

How dangerous would have been the situation of the republic of Carthage, had Hannibal made himself master of Rome? What would not he have done in his own country, had he been victorious, he who caused so many revolutions in it after his defeat †?

HANNO could never have dissuaded the senate from sending aid to Hannibal, had he used no other argument than his own jealousy. The Carthaginian senate, whose wisdom is so highly extolled by Aristotle (and which has been evidently proved by the prosperity of that republic) could never have been determined by other than solid reasons. They must have been stupid not to see, that an army at the distance of three hundred leagues would necessarily be exposed to losses, which required reparation.

HANNO's party insisted that Hannibal should be delivered up to the Romans ‡. They could not at that time be apprehensive of the Romans; they were therefore afraid of Hannibal.

It was impossible, some will say, for them to imagine that Hannibal had been so successful. But how was it possible for them to doubt of it? Could the Carthaginians, a people spread over all the earth, be ignorant of what was transacting in Italy? No: they were sufficiently acquainted with it, and for that reason they did not care to send supplies to Hannibal.

† He was at the head of a faction.

‡ Hanno wanted to deliver Hannibal up to the Romans, as Cato would soon have delivered up Caesar to the Gauls.

HANNO became more resolute after the battle of Trebia, after the battle of Thrasimenus, after that of Cannæ; it was not his incredulity that increased, but his fear.

CH A P. VII.

Continuation of the same Subject.

THERE is still another inconveniency in conquests made by democracies; their government is always hateful to the conquered states. It is apparently monarchical; but in reality it is much more oppressive than monarchy, as the experience of all ages and countries evinces.

THE vanquished people are in a melancholy situation; they neither enjoy the advantages of a republic, nor those of a monarchy.

WHAT has been here said of a popular state, is applicable to aristocracy.

CH A P. VIII.

Continuation of the same Subject.

WHEN a republic therefore keeps another nation in subjection, it should endeavour to repair the inconveniencies arising from the nature of its situation, by giving it good laws both for the political and civil government of the people.

WE have an instance of an island in the Mediterranean, subject to an Italian republic; whose political and civil laws were very defective with regard to the inhabitants of that island. The act of

indemnity ♦, by which it ordained that no one should be condemned to bodily punishment in consequence of the private knowledge of the governor, *ex informata conscientia*, is still recent in every body's memory. There have been frequent instances of the people's petitioning for privileges: here the monarch grants only the common right of every nation.

C H A P. IX.

Of Conquests made by a Monarchy.

IF a monarchy can long subsist before it is weakened by its increase, it will become formidable; and its strength will remain entire, while pent up by the neighbouring monarchies.

It ought not therefore to aim at conquest beyond the natural bounds of its government. So soon as it has passed these limits, it is prudence to stop.

IN this kind of conquest things must be left as they were found; the same courts of judicature, the same laws, the same customs, the same privileges: there ought to be no other alteration than that of the army and of the name of the prince.

WHEN a monarchy has extended its limits by the conquest of neighbouring provinces, it should treat those provinces with great lenity.

IF a monarchy has been long endeavouring at

♦ Of the 18th of October 1738. printed at Genoa, by Franchelli, *Vediamo al nostro general governatore in detta isola di condannare in avvivere solamente, ex informata conscientia, persona alcuna nazionale in pena affittiva; potrà bensì arrestare ed incarcerare le persone che gli saranno sospette, salvo di renderne poi a noi conto sollecitamente. Art. 6.*

conquests, the provinces of its ancient demesne are generally ill-used. They are obliged to submit both to the new and to the ancient abuses; and to be depopulated by a large metropolis, that swallows up the whole. Now if after having made conquests round its demesne, the vanquished people were treated like the ancient subjects, the state would be undone; the taxes sent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and of course the frontiers would be weaker; the people would be disaffected; and the subsistence of the armies designed to act and remain there, would become more precarious.

SUCH is the necessary state of a conquering monarchy; a shocking luxury in the capital; misery in the provinces somewhat distant; and plenty in the most remote. It is the same with such a monarchy as with our planet: fire at the centre; verdure on the surface, and a dry, cold, and barren earth between both.

C H A P. X.

Of one Monarchy that subdues another.

ONE monarchy is sometimes subdued by another. The smaller the latter, the better it is over-awed by fortresses; and the larger it is, the better it will be protected by the colonies.

C H A P. XI.

Of the Manners of a vanquished People.

IT is not sufficient in those conquests to let the conquered nation enjoy their own laws; it is perhaps more necessary to leave them also their manners, because people in general have a stronger attachment to these, than to their laws.

THE French have been obliged nine times to leave Italy, because, as historians say §, of their insolent familiarities with the fair sex. It is too much for a nation to be obliged to bear not only with the pride of the conquerors, but with their incontinence and indiscretion; these are, undoubtedly, most grievous and intolerable, as they are the source of numberless outrages,

C H A P. XII.

Of a Law of Cyrus.

THAT which Cyrus made to oblige the Lydians to practise none but mean or infamous professions, is, in my opinion, a very bad one. It is true, he directed his attention to an object of the greatest importance; he thought of guarding against revolts, and not invasions: but invasions will soon come, when the Persians and Lydians unite and corrupt each other. I would therefore much rather support by laws the simplicity and rudeness of the conquering nation, than the effeminacy of the conquered.

§ See Puffendorf's Universal History.

ARISTODEMUS, tyrant of Cumæ†, used all his endeavours to banish courage, and to enervate the minds of youth. He ordered that boys should let their hair grow in the same manner as girls, that they should deck it with flowers, and wear long robes, party-coloured, down to their heels; that when they went to their masters of music and dancing, they should have women with them to carry their umbrello's, perfumes and fans, and to present them with combs and looking-glasses whenever they bathed. This education lasted till the age of twenty, an education that could be agreeable to none but a petty tyrant, who exposes his sovereignty to defend his life.

C H A P. XIII.

C H A R L E S XII.

THIS prince, who solely depended on his own strength, hastened his ruin by forming designs that could never be executed but by a long war, a thing which his kingdom was unable to support.

IT was not a declining state he undertook to subvert, but a rising empire. The Russians made use of the war he waged against them, as of a military school. Every defeat brought them nearer to victory; and losing abroad, they learnt to defend themselves at home.

CHARLES, in the deserts of Poland, imagined himself master of the whole world: here he wandered, and with him in some measure wandered Sweden; whilst his capital enemy acquired new

† Dionys. Halicar. l. 7.

strength against him, locked him up, made settlements along the Baltic, destroyed or conquered Livonia.

SWEDEN was like a river, whose waters are cut off at the fountain head, in order to change its course.

IT was not the affair of *Pultowa* that ruined Charles. Had he not been destroyed at that place, he would at another. The casualties of fortune are easily repaired; but who can be guarded against events that continually arise from the nature of things?

BUT neither nature nor fortune were ever so much against him, as he himself.

HE was not directed by the present situation of things, but by a kind of plan of his own forming; and even this he very badly followed. He was not an Alexander; but he would have made an excellent soldier under that prince.

ALEXANDER's project succeeded because it was prudently concerted. The bad success of the Persians in their several invasions of Greece, the conquests of Agesilaus, and the retreat of the ten thousand, had shewn to demonstration the superiority of the Greeks in their manner of fighting and in their arms; and it was well known that the Persians were too proud to be corrected.

IT was no longer possible for them to weaken Greece by divisions: Greece was then united under one head, who could not pitch upon a better method of rendering her insensible of her slavery, than by flattering her vanity with the destruction of her hereditary enemy, and with the hopes of the conquest of Asia.

AN empire cultivated by the most industrious

nation in the world, that followed agriculture from a principle of religion; an empire abounding with every conveniency of life, furnished the enemy with all necessary means of subsisting.

It was easy to judge by the pride of those kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by their forwardness in venturing battles; and that the flattery of their courtiers would never allow them to doubt of their grandeur.

THE project was not only wise, but wisely executed. Alexander, in the rapidity of his conquests, even in the impetuosity of his passion, had, if I may so express myself, a flash of reason by which he was directed, and which those who would fain have made a romance of his history, and whose minds were more corrupt than his, could not conceal from our view. Let us consider his history more minutely.

C H A P. XIV.

ALEXANDER.

HE did not set out upon his expedition till he had secured Macedonia against the neighbouring barbarians, and completed the reduction of Greece; he availed himself of this conquest for no other end than for the execution of his grand enterprize; he rendered the jealousy of the Lacedæmonians of no effect; he attacked the maritime provinces; he caused his land forces to keep close to the sea coast, that they might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisi-

ons; and if it be true that victory gave him every thing, he, in his turn, did every thing to obtain it. In the beginning of his enterprize, a time when the least check might have proved his destruction, he trusted very little to fortune; but when his reputation was established by a series of successful events, he sometimes had recourse to temerity. When before his departure for Asia, he marched against the Triballians and Illyrians, you find he waged war * against those people in the very same manner as Cæsar afterwards conducted that against the Gauls. Upon his return to Greece †, it was in some measure against his will, that he took and laid waste Thebes. When he invested that city, he wanted the inhabitants to come into terms of peace; but they hastened their own destruction. When it was debated, whether he should attack the Persian fleet §, it is Parmenio that shews his presumption, Alexander his wisdom. His aim was to draw the Persians from the sea-coast, and to lay them under a necessity of abandoning their marine, in which they had a manifest superiority. Tyre being from principle attached to the Persians, who could not subsist without the commerce and navigation of that city; Alexander destroyed it. He subdued Egypt, which Darius had left bare of troops, while he was assembling large armies in another world.

ALEXANDER owed the conquest of the Greek colonies to the passage of the Granicus; the reduction of Tyre and Egypt to the battle of Issus; and the empire of the world to the battle of Arabela.

* See Arrian de expedit. Alexandri, lib. 1. † Ibid.

§ Ibid.

AFTER the battle of Issus, he suffered Darius to escape, and employed his time in securing and regulating his conquests; after the battle of Arabela he pursued him so close *, as to leave him no place of shelter in his empire. Darius enters his towns, his provinces, to quit them the next moment; and Alexander marches with such rapidity, that the empire of the world seems to be rather the prize of an Olympian race, than the fruit of a great victory.

THUS he carried on his conquests; let us now see how he preserved them.

HE opposed those who would have had him treat the Greeks as masters †, and the Persians as slaves. He thought only of uniting the two nations, and of abolishing the distinctions of a conquering and a conquered people. After he had compleated his victories, he relinquished all those prejudices that had helped him to obtain them. He assumed the manners of the Persians, that he might not chagrine them too much by obliging them to conform to those of the Greeks. It was this humanity which made him shew so great a respect for the wife and mother of Darius; and this that made him so continent. What a conqueror! he is lamented by all the nations he has vanquished! What an usurper! At his death the very family he has cast from the throne are all in tears. These were the most glorious passages in his life, and such as history cannot produce an instance in any other conqueror.

NOTHING strengthens a conquest more than the union formed between the two nations by marriages.

* See Arrian de expedit. Alexandri.

† This was Aristotle's advice. Plutarch's *Morals*, of the fortune and virtue of Alexander.

Alexander chose his wives from the nation he had subdued; he insisted on his courtiers doing the same; and the rest of the Macedonians followed the example. The Franks and Burgundians permitted those marriages *; the Visigoths forbade them in Spain, and afterwards allowed them †. By the Lombards they were not only allowed but encouraged §. When the Romans wanted to weaken Macedonia, they commanded that there should be no intermarriages between the people of different provinces.

ALEXANDER, whose aim was to unite the two nations, thought proper to establish in Persia a great number of Greek colonies. He built therefore a vast number of towns; and so strongly were all the parts of this new empire cemented, that after his decease, amidst the disturbances and confusion of the most frightful civil wars, when the Greeks had reduced themselves, as it were, to a state of annihilation, not a single province of Persia revolted.

To prevent Greece and Macedon from being too much exhausted, he sent a colony of Jews ¶ to Alexandria; the manners of those people signified nothing to him, provided he could be sure of their fidelity.

HE not only suffered the vanquished nations to retain their own customs and manners, but also

* See the law of the Burgundians, tit. 12. art. 5.

† See the Law of the Visigoths, book 3. tit. 1. Sect. 1. which abrogates the ancient law that had more regard, it says, to the difference of nations than to that of people's conditions.

§ See the law of the Lombards, book 2. tit. 7. Sect. 1. and 2.

¶ The kings of Syria, abandoning the plan laid down by the founder of the empire, resolved to oblige the Jews to conform to the manners of the Greeks; a resolution that gave the most terrible shock to their government.

their civil laws; and frequently the very kings and governours to whom they had been subject: the Macedonians * he placed at the head of the troops, and the natives of the country at the head of the government, rather chusing to run the hazard of a particular disloyalty, (which sometimes happened) than of a universal revolt.

HE paid a great respect to the ancient traditions, and to all the public monuments of the glory or vanity of nations. The Persian monarchs having destroyed the temples of the Greeks, Babylonians, and Egyptians, Alexander rebuilt them †: few nations submitted to his yoke, to whose religion he did not conform; and his conquests seem to have been intended only to make him the particular monarch of each nation, and the first inhabitant of each city. The aim of the Romans in conquest was to destroy, his to preserve; and wherever he directed his victorious arms, his principal view was to achieve something, from whence that country might derive an increase of prosperity and power. To attain this end, he was enabled first of all by the greatness of his genius; secondly, by his frugality and private œconomy §; thirdly, by his profusion in affairs of importance. He was close and reserved in his private expences; but generous to the highest degree in those of a public nature. In regulating his household, he was the private Macedonian: but in paying the troops, in sharing his conquests with the Greeks, and in his largesses to every soldier in his army, he was Alexander.

HE was guilty of two very bad actions, in setting Persepolis on fire, and killing Clitus; but he

* See Arrion de expedit. Alexand. lib. 3. and others.

† Ibid.

§ Ibid.

rendered them famous by his repentance. Hence it is that his crimes are forgotten, while his regard for virtue was recorded: they were considered rather as unlucky accidents, than as his own deliberate acts. Posterity, struck with the beauty of his mind, even in the midst of his irregular passion, can view him only with compassion, but never with an eye of hatred.

LET us draw a comparison between him and Cæsar. The Roman general, by attempting to imitate the Asiatic monarch, threw his fellow-citizens into a state of despair for a matter of mere ostentation; the Macedonian prince, by the same imitation, did a thing which was quite agreeable to his original scheme of conquest.

CH A P. XV.

New Methods of preserving a Conquest.

WHEN a monarch has subdued an extensive country, he may make use of an admirable method, equally proper for moderating despotic power, and for preserving the conquest; it is a method practised by the Chinese conquerors.

IN order to prevent the vanquished nation from falling into despair, the victors from growing insolent and proud, the government from becoming military, and to contain the two nations within their duty; the Tartar family now on the throne of China has ordained that every military corps in the provinces should be composed half of Chinese and half Tartars, in order that the jealousy between the two nations may keep them within bounds. The courts of judicature are also half Chinese, and half

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Tartars. This is productive of many good effects.

1. The two nations are a check to one another. 2. They both preserve the civil and military power, and one is not destroyed by the other. 3. The conquering nation may spread itself without being weakened and lost. It is also enabled to withstand civil and foreign wars. The want of so wise an institution as this has been the destruction of most part of the conquerors that ever existed.

C H A P. XVI.

Of Conquests made by a despotic Prince.

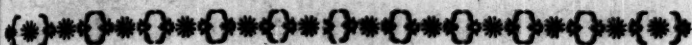
WHEN a conquest happens to be very large, it supposes a despotic power: and then the army dispersed in the provinces is not sufficient. There should continually be a body of faithful troops near the prince, ready to fall immediately upon any part of the empire that may chance to waver. This military corps ought to awe the rest, and to strike terror into those who through necessity have been intrusted with any authority in the empire. The emperor of China has always a large body of Tartars near his person, ready upon all occasions. In India, in Turkey, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the dispersed troops in awe.

C H A P. XVII.

Continuation of the same Subject.

WE have observed, that the countries subdued by a despotic prince ought to be held by a vassal. Historians are very lavish of their praises on the generosity of those conquerors, who restored the princes to the throne whom they had vanquished. The Romans then were vastly generous, who made such a number of kings, in order to have instruments of slavery*. A proceeding of that kind is absolutely necessary. If the conqueror intends to preserve the country which he has subdued, neither the governors he sends will be able to contain the subjects within duty, nor he himself the governors. He will be obliged to strip his ancient patrimony of troops, in order to secure his new dominions. The miseries of each nation will be common to both; civil broils will spread themselves from one to the other. On the other hand, if the conqueror restores the legitimate prince to the throne, he will of course have an ally; by the junction of whose forces his own power will be increased. We have a recent instance of this in *Shah Nadir*, who overcame the Mogul, seized his treasures, and left him in possession of Indostan.

* *Ut haberent instrumenta servitutis & reges.*



B O O K XI.

Of the Laws which establish political Liberty, in respect to the Constitution.

C H A P. I.

A general Idea.

I MAKE a distinction between the laws that establish political liberty, as it relates to the constitution, and those by which it is established, as it relates to the citizen. The former shall be the subject of this book; the latter I shall examine in the next.

C H A P. II.

Various Significations of the word Liberty

THERE is no word that admits of more various significations, and has made more different impressions on the human mind, than that of *Liberty*. Some have taken it for a facility of deposing a person on whom they had conferred a tyrannical authority; others for the power of choosing a superior whom they are obliged to obey; others, for the right of bearing arms, and of being thereby enabled to use violence; others, in short, for the privilege of being governed by a native of their own country, or by their own laws *.

* I have copied, says Cicero, Scævola's edict, which allows the Greeks to terminate their differences among themselves according to their own laws; this makes them consider themselves as a free people.

A certain nation for a long time thought liberty consisted in the privilege of wearing a long beard†. Some have annexed this name to one form of government exclusive of others: Those who had a republican taste, applied it to this species of polity; those who loved a monarchical state, gave it to monarchy§. Thus they have all applied the name of *liberty* to the government most suitable to their own customs and inclinations: and as in republics, the people have not so constant and so present a view of the causes of their misery, and as the magistrates seem to act only in conformity to the laws, hence liberty is commonly said to reside in republics, and to be banished from monarchies. In a word, as in democracies the people seem to act almost as they please; this kind of government has been deemed the most free; and the power of the people has been confounded with their liberty.

CH A P. III.

In what Liberty consists.

IN democracies, it is true, the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

WE must always have present to our minds the

† The Russians could not bear that Czar Peter should make them cut it off.

§ The Cappadocians refused the condition of a republican state, which was offered them by the Romans.

difference between independence and liberty. Liberty is a right of doing whatever the laws permit; and if a citizen could do what they forbid, he would be no longer possess of liberty, because all his fellow citizens would have the same power.

CH A P. IV.

Continuation of the same Subject.

DEMOCRATIC and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments: and even not always in these. It is there only when there is no abuse of power; but constant experience shews us, that every man invested with power is apt to abuse it; and to carry his authority as far as it will go. Is it not strange, though true, to say, that virtue itself has need of bounds?

To prevent this abuse, it is necessary from the very nature of things, power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which is allowed by the law.

CH A P. V.

Of the End or View of different Governments.

THOUGH every government has the same general end, which is that of preservation, yet each has another particular object. Increase of dominion was the object of Rome; war, that of Sparta; religion, that of the Jewish laws; com-

merce, that of Marfeilles; public tranquillity, that of the laws of China*; navigation, that of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general, the pleasures of the sovereign, that of despotic states; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland, from thence results the oppression of the whole. †

THERE is likewise one nation in the world, that has political liberty for the direct end of its constitution. We shall presently examine the principles on which this liberty is founded; if they are sound, liberty will appear in its highest perfection.

No great labour is requisite to discover political liberty in a constitution. If we are capable of seeing it where it exists, it is soon found, and we need not go far in search of it.

CH A P. VI.

Of the Constitution of England.

THERE are three sorts of power in every government: the legislative; the executive in respect to things dependent on the law of nations; and the executive, in regard to matters that depend on the civil law.

By virtue of the first, the sovereign, or magistrate, enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war,

* The natural end of a state that has no foreign enemies, or that thinks itself secured against them by barriers.

† Inconveniency of the *Liberum veto*.

sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

THE political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is necessary the government be so constituted as one man need not be afraid of another.

WHEN the legislative and executive powers are united in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same prince or senate should enact tyrannical laws, to execute them in a tyrannical manner.

AGAIN, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

THERE would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

MOST kingdoms in Europe enjoy a moderate government, because the monarch who is invested with the two first powers leaves the third to his subjects. In Turkey, where these three powers are

united in the Sultan's person, the subjects groan under the most cruel oppression.

IN the republics of Italy where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks, witness the state inquisitors*, and the lion's mouth into which every informer may at all hours throw his written accusations.

IN what a miserable condition must the poor subject be, under those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have also the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

THE whole power is here united in one body; and though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

HENCE it is that many of the sovereigns of Europe, whose aim has been levelled at arbitrary power, have always set out with uniting in their own persons all the branches of magistracy, and all the great offices of state.

I INDEED confess, that the mere hereditary aristocracy of the Italian republics does not exactly answer to the despotic power of the Eastern princes. The number of magistrates sometimes moderate the power of the magistracy; the whole body of the nobles do not always concur in the same designs;

* At Venice.

and different tribunals are erected, that temper each other. Thus at Venice the legislative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.

THE judiciary power ought not to be given to a standing senate, it should be exercised by persons taken from the body of the people*, at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method the judicial power, so dreadful to men, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges constantly present to their view; they fear the office, but not the magistrate.

IN accusations of a deep or criminal nature, it is proper the person accused should have the privilege of chusing in some measure his judges in concurrence with the law; or at least he should have a right to except against so great a number, that the remaining part may be deemed his own choice.

THE other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

BUT though the tribunals ought not to be fixt, the judgments ought; and to such a degree as to be

* As at Athens.

ever conformable to the letter of the law. Were they to be the private opinion of the judge, people would then live in society, without exactly knowing the nature of their obligations.

THE judges ought also to be of the same rank as the accused, or in other words, his peers; to the end that he may not imagine he is fallen into the hands of persons inclined to treat him rigorously.

IF the legislature leaves the executive power in possession of a right to imprison those subjects, who can give security for their good behaviour, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime; in which case they are really free, being subject only to the power of the law.

BUT should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it for ever.

AND this is the only reasonable method that can be substituted to the tyrannical magistracy of the *Epbori*, and to the *state inquisitors* of Venice, who are also despotical.

As in a country of liberty, every man who is supposed a free agent ought to be his own governor; the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniencies; it is fit the people should transact by their representatives, what they cannot transact by themselves.

THE inhabitants of a particular town are much

better acquainted with its wants and interests, than with those of other places; and are better judges of the capacity of their neighbours, than of that of the rest of their countrymen. The members therefore of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place, a representative should be elected by the inhabitants.

THE great advantage of representatives is their capacity of discussing public affairs. For this the people collectively are very unfit, which is one of the chief inconveniencies of a democracy.

It is not at all necessary that the representatives who have received a general instruction from their constituents should wait to be directed on each particular affair, as is practised in the diets of Germany. It is true, that by this way of proceeding; the speeches of the deputies might with greater propriety be called the voice of the nation; but, on the other hand, this would occasion great delays; would give each deputy a power of controlling the assembly; and, on the most urgent occasions, the wheels of government might be stopped by the caprice of a single person.

WHEN the deputies, as Mr. Sidney justly remarks, represent a body of people, as in Holland, they ought to be accountable to their constituents; but it is a different thing in England, where they are deputed by boroughs.

ALL the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation, as to be deemed to have no will of their own.

ONE great fault there was in most of the ancient republics, that the people had a right to active

resolutions, such as require some execution, a thing of which they are quite incapable. They ought to have no share in the government but for the chusing of representatives, which is within their reach. For though few can tell the exact degree of men's capacities, yet there are none but are capable of knowing in general, whether the person they chuse is better qualified than most of his neighbours.

NEITHER ought the representative body to be chosen for the executive part of government, for which it is not so fit; but for the enacting of laws, or to see whether the laws in being are duly executed, a thing suited to their abilities, and which none indeed but themselves can properly perform.

IN such a state there are ever persons distinguished by their birth, riches, or honours: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have therefore in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the people have a right to oppose any encroachment of theirs.

THE legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberations apart, each their separate views and interests.

OF the above-mentioned three powers, the judiciary is in some measure next to nothing: there

remain therefore only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose.

THE body of the nobility ought to be hereditary. In the first place it is so in its own nature; and in the next there must be a considerable interest to preserve its privileges; privileges that in themselves are obnoxious to popular envy, and consequently in a free state are always in danger.

BUT as an hereditary power might be tempted to pursue its own particular interests, and forget those of the people; it is proper that where a singular advantage may be gained by corrupting the nobility, as in the laws relating to the supplies, they should have no other share in the legislation, than the power of rejecting, and not that of resolving.

By the *power of resolving*, I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of rejecting*, I would be understood to mean the right of annulling a resolution taken by another; which was the power of the tribunes at Rome. And though the person possessed of the privilege of rejecting may also have the right of approving; yet this approbation passes for no more than a declaration, that he intends to make no use of his privilege of rejecting, and is derived from that very privilege.

THE executive power ought to be in the hands of a sovereign, because this branch of government, having need of dispatch, is better administered by one than by many: on the contrary, whatever depends on the legislative power, is frequently better regulated by many than by a single person.

BUT if there were no sovereign, and the executive power should be committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would sometimes possess, and would be always able to possess, a share in both.

WERE the legislative body to be a considerable time without meeting, this would also put an end to liberty. For of two things one would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power, which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power, so as to take off its attention to its office, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

AGAIN, were the legislative body to be constantly assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body were once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: but were it to be always the same body, the people upon seeing it once corrupted, would no longer expect any good from its laws; and consequently

they would either become desperate or fall into a state of indolence.

THE legislative body should not meet of itself. For a body is supposed to have no will but when it is met; and besides, were it not to meet unanimously, it would be impossible to determine which was really the legislative body; the part assembled, or the other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be very dangerous, in case it should ever attempt to incroach on the executive power. Besides, there are seasons, some more proper than others, for assembling the legislative body: it is fit therefore that the executive power should regulate the time of meeting, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

WERE the executive power not to have a right of restraining the incroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would presently destroy all the other powers.

BUT it is not proper, on the other hand, that the legislative power should have a right to stay the executive. For as the execution has its natural limits, it is needless to confine it; besides, the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but also to the executive part of government; which was attended with infinite mischiefs.

BUT if the legislative power in a free state has no right to stay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed; an advantage

which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

BUT whatever may be the issue of that examination, the legislative body ought not to have a power of arraigning the person, nor of course the conduct of him who is intrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

IN this case, the state would be no longer a monarchy, but a sort of a republic, though not a free government. But as the person intrusted with the executive power cannot abuse it without bad counsellors, and such as hate the laws as ministers, though the laws protect them as subjects; these men may be examined and punished. An advantage which this government has over that of *Gnidus*, where the law allowed of no such thing as calling the *Amymones* * to account, even after their administration †; and therefore the people could never obtain any satisfaction for the injuries done them.

THOUGH in general the judiciary power ought not to be united with any part of the legislative, yet this is liable to three exceptions, founded on the particular interest of the party accused.

THE great are ever obnoxious to popular envy;

* These were magistrates chosen annually by the people. See Stephen of Byzantium.

† It was lawful to accuse the Roman magistrates after the expiration of their several offices. See in Dionys. Halicarn. l. 9, the affair of *Genulius* the tribune,

and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meanest subject is possessed of in a free state, of being tried by his peers. The nobility, for this reason, ought not to be cited before the ordinary courts of judicature, but before that part of the legislature which is composed of their own body.

It is possible that the law, which is clear-sighted in one sense, and blind in another, might, in some cases be too severe. But, as has been already remarked, the national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigour. That part therefore of the legislative body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this; it belongs to its supreme authority to moderate the law in favour of the law itself, by mitigating the sentence.

It might likewise happen, that a subject intrusted with the administration of public affairs may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not, or would not punish. But, in general, the legislative power cannot try causes; and much less can it try this particular case, where it represents the party aggrieved, which is the people. It can only therefore impeach. But before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals, which are its inferiors, and being composed moreover of men who are chosen from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No: in order to preserve the

dignity of the people, and the security of the subject, the legislative part, which represents the people, must bring in its charge before the legislative part, which represents the nobility, who have neither the same interests, nor the same passions.

HERE is an advantage which this government has over most of the ancient republics, where this abuse prevailed, that the people were at once both judge and accuser.

THE executive power, pursuant to what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be stripped of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.

IF the sovereign were to have a part in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

THE change of government at Rome was owing to this, that neither the senate, who had one part of the executive power, nor the magistrates, who were entrusted with the other, had the right of rejecting, which was entirely lodged in the people.

HERE then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check each other by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive power is by the legislative.

THESE three powers should naturally form a state of repose or inaction. But as there is a ne-

cessity for movement in the course of human affairs, they are forced to move, but still in concert.

As the executive power has no other part in the legislative, than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose, because as it may always disapprove of the resolutions that shall be taken, it may also reject the decisions on those proposals that were made against its will.

IN some ancient commonwealths, where public debates were carried on by the people in a body, it was natural for the executive power to propose and debate in conjunction with the people, otherwise their resolutions must have been attended with a strange confusion.

WERE the executive power to determine the raising of public money, otherwise than by giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation.

IF the legislative power was to settle the subsidies, not from year to year, but for ever, it would be in danger of losing its liberty, because the executive power would be no longer dependent; and when once it was possessed of such a perpetual right, it would be a matter of indifference, whether it held it of itself, or of another. 'The same' may be said, if it should come to a resolution of intrusting, not an annual, but a perpetual command, of the fleet and armies to the executive power.

To prevent the executive power from being able to oppress, it is requisite that the armies with which it is entrusted should consist of the people, and have the same spirit as the people, as was the

case at Rome till the time of *Marius*. To obtain this end, there are only two ways, either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as was customary at Rome: or if there should be a standing army composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it thought proper; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortrefs should be allowed.

WHEN once an army is established, it ought not to depend immediately on the legislative, but on the executive power; and this from the very nature of the thing, its business consisting more in action than deliberation.

It is natural for mankind to set a higher value upon courage than timidity, on activity than prudence, on strength than counsel. Hence the army will always despise a senate, and respect their own officers. They will naturally slight the orders sent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as soon as the troops depend solely on the legislative body, it becomes a military government; and if the contrary has ever happened, it has been owing to some extraordinary circumstances. It is because the army was always kept divided; it is because it was composed of several bodies that depended each on a particular province; it is because the capital towns were strong places, defended by their natural situation, and not garrisoned with regular troops. Holland, for example, is still safer than Venice; she might

drown, or starve the revolted troops; for as they are not quartered in towns capable of furnishing them with necessary subsistence, this subsistence is of course precarious.

IN perusing the admirable treatise of Tacitus on the manners of the Germans †, we find it is from that nation the English have borrowed the idea of their political government. This beautiful system was first invented in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, will perish. Have not Rome, Sparta, and Carthage perished? It will perish when the legislative power shall be more corrupt than the executive.

IT belongs not to me to examine whether the English actually enjoy this liberty, or not. Sufficient it is for my purpose to observe, that it is established by their laws; and I enquire no farther.

NEITHER do I pretend by this to undervalue other governments, nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design, I who think that even the highest refinement of reason is not always desirable, and that mankind generally find their account better in mediums than extremes?

HARRINGTON, in his *Oceana*, has likewise enquired into the utmost degree of liberty to which the constitution of a state may be carried. But of him indeed it may be said, that for want of knowing the nature of real liberty, he busied himself in

† *De minoribus rebus principes consultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est, apud principes pertrahantur.*

pursuit of an imaginary one; and that he built a Chalcedon, though he had before his eyes a Byzantium.

C H A P. VII.

Of Monarchies we are acquainted with.

THE monarchies we are acquainted with, have not, like that we have been speaking of, liberty for their direct view: their sole aim is the glory of the subject, of the state, and of the prince. But from hence there results a spirit of liberty, which in those states is capable of atchieving as great things, and of contributing as much perhaps to happiness as liberty itself.

HERE the three powers are not distributed and founded on the model of the constitution above-mentioned; they have each a particular distribution, according to which they border more or less on political liberty; and if they did not border upon it, monarchy would degenerate into despotic government.

C H A P. VIII.

Why the ancients had not a clear idea of Monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much less on a legislative body composed of the representatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and convened their subjects within their walls. Before Rome had swallowed up all the other republics, there was hardly a king to be

found any where, no, not in Italy, Gaul, Spain, or Germany; they were all petty states, or republics. Even Africa itself was subject to a great commonwealth: and Asia-minor was occupied by Greek colonies. There was therefore no instance of deputies of towns or assemblies of the states; one must have gone as far as Persia to find a monarchy.

I AM not ignorant that there were confederate republics; in which several towns set deputies to an assembly. But I affirm there was no monarchy on that model.

THE first plan therefore of the monarchies we are acquainted with, was thus formed. The German nations that subdued the Roman empire were certainly a free people. Of this we may be convinced only by reading Tacitus *On the Manners of the Germans*. The conquerors spread themselves over all the country; living mostly in the fields, and very little in towns. When they were in Germany, the whole nation was able to assemble. This they could no longer do, when dispersed through the conquered provinces. And yet as it was necessary that the nation should deliberate on public affairs, according to their usual method before the conquest; they had recourse to representatives. Such is the origin of the Gothic government amongst us. At first it was mixt with aristocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond-men. The custom afterwards succeeded of granting letters of enfranchisement, and was soon followed by so perfect a harmony between the civil liberty of the people, the privilege of the nobility and clergy, and the prince's prerogative,

that I really think there never was a government so well tempered, as that of each part of Europe, so long as it lasted. Surprizing, that the corruption of the government of a victorious nation should have given birth to the best species of constitution that could possibly be imagined by man!

CHAP. IX.

Aristotle's manner of thinking.

ARISTOTLE is greatly puzzled in treating of monarchy*. He makes five species; and he does not distinguish them by the form of constitution, but by things merely accidental, as the virtues and vices of the sovereign; or by things extrinsecal, such as tyranny usurped or inherited.

AMONG the number of monarchies, he ranks the Persian empire and the kingdom of Sparta. But is it not evident, that the one was a despotic state and the other a republic?

THE ancients, who were strangers to the distribution of the three powers in the government of a single person, could never form a just conception of monarchy.

CHAP. X.

What other Politicians thought.

TO temper monarchy, Arybas, king † of Epirus, found no other remedy than a republic. The Molossi, not knowing how to limit the

* Polit. book 3. chap. 14.

† See Justin, Book 17.

same power, made two kings ♦, by which means the state was weakened more than the prerogative; they wanted rivals, and they created enemies.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of the constitution.

C H A P. XI.

Of the Kings of the heroic Times of Greece.

IN the heroic times of Greece a species of monarchy arose that was not of long duration §. Those who had been inventors of arts, who had fought in their country's cause, who had established societies, or distributed lands among the people, obtained the regal power, and transmitted it to their posterity. They were kings, priests, and judges. This is one of the five kinds of monarchy mentioned by Aristotle *; and the only one that can give us any idea of the monarchical constitution. But the plan of this constitution is opposite to that of our modern monarchies.

THE three powers were so distributed there, that the people were the legislature †, and the sovereign had the executive, together with the judiciary power; whereas in modern monarchies the prince is invested with the executive and legislative powers, or at least with part of the legislative, but does not act in a judiciary capacity.

♦ Arist. Polit. Book 5. Chap. 8.

§ Ibid. Book 3. Chap. 14.

* Ibid.

† See what Plutarch says in the Life of Theseus. See likewise Thucydides, Book 1.

IN the government of the kings of the heroic times, the three powers were ill distributed. Hence those monarchies could not long subsist. For as soon as the people got the legislative power in their hands, they might, as they every where did, upon the very least caprice, subvert the regal authority.

AMONG a free people possessed of the legislative power, and enclosed within walls, where every thing tending towards oppression appears still more odious, it is the master-piece of legislation to know where to place properly the judiciary power. But it could not be in worse hands than in those of the person to whom the executive power had been already committed. From that time the king became terrible. But at the same time as he had no share in the legislature, he could make no defence against it; thus his power was in one sense too large, in another too small.

THEY had not as yet discovered that the true function of a prince was to appoint judges, and not to sit as judge himself. The opposite policy rendered the government of a single person insupportable. Hence all these kings were banished. The Greeks had no notion of the proper distribution of the three powers in the government of one person; they could see it only in that of many; and this kind of constitution they called *Polity* *.

* Aristot. Polit. Book 4. Chap. 8.

CHAP. XII.

Of the Government of the Kings of Rome, and in what Manner the three Powers were there distributed.

THE government of the kings of Rome had some relation to that of the kings of the heroic times of Greece. Its subversion, like the latter's, was owing to its general defect, though in its own particular nature it was very good.

IN order to give an adequate idea of this government, I shall distinguish that of the five first kings, that of Servius Tullius, and that of Tarquin.

THE crown was elective, and under the five first kings the senate had the greatest share in the election.

UPON the king's decease the senate examined whether they should continue the established form of government. If they thought proper to continue it, they named a magistrate § taken from their own body, who chose a king; the senate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the Gods. If any of these three conditions was wanting, they were obliged to proceed to another election.

THE constitution was a mixture of monarchy, aristocracy, and democracy; and such was the harmony of power, that there was no instance of jealousy or dispute in the first reigns. The king com-

§ Dionys. Halicarn. book 2. p. 120. and book 4. p. 243. and 243.

manded the armies, and had the direction of the sacrifices; he had the power of determining * civil and criminal † causes, he called the senate together, assembled the people, laid some affairs before the latter, and regulated the rest with the senate ¶.

THE authority of the senate was very great. The kings frequently pitched upon senators with whom they sat in judgment; and they never laid any affair before the people, till it had been previously debated § in that august assembly.

THE people had the right of chusing * magistrates, of consenting to the new laws, and, with the king's permission, of making war and peace: But they had not the judicial power. When Tullius Hostilius referred the trial of Horatius to the people, he had his particular reasons, which may be seen in Dionysius Halicarnassensis †.

THE constitution altered under ¶ Servius Tullius. The senate had no share in his election; he caused himself to be proclaimed by the people; he resigned the power of hearing civil causes ♦, refer-

* See *Tanaquil's* discourse on Livy, book 1. dec. 1. and the regulations of Servius Tullius in Dionys. Halicarn. book 4. p. 229.

† See Dionys. Halicarn. book 2. p. 118. and book 3. p. 171.

¶ It was by virtue of a *senatus consultum* that Tullius Hostilius ordered Alba to be destroyed. Dionys. Halicarn. book 3. p. 167. and 172.

§ Ibid. book 4. p. 276.

* Ibid. book 2. And yet they could not have the nomination of all offices, since Valerius Publicola made that famous law, by which every citizen was forbid to exercise any employment, unless he had obtained it by the votes of the people.

† Book 3. p. 159.

¶ Dionys. Halicarn. book 4.

♦ He divested himself of half the regal power, says Dionys. Halicarn. book 4. p. 229.

ving none but those of a criminal nature to himself; he laid all affairs directly before the people, eased them of the taxes, and imposed the whole burthen on the Patricians. Hence in proportion as he weakened the legal together with the senatorian power, he strengthened that of the Plebeians †.

TARQUIN would neither be chosen by the senate nor by the people; he considered Servius Tullius as an usurper, and seized the crown as his hereditary right. He destroyed the greatest part of the senators; those who remained he never consulted; nor did he even so much as summon them to assist at his decisions *. Thus his power augmented: but the odium of that power received a new addition, by usurping likewise the authority of the people, against whose consent he enacted several laws. The three powers were by these means re-united in his person; but the people at a critical minute recollected that they were legislators, and there was an end of Tarquin.

CHAP. XIII.

General Reflexions on the State of Rome after the Expulsion of its Kings.

ANCIENT Rome is so agreeable a subject, that it is impossible to be tired with it: thus strangers at present leave the modern palaces of that celebrated capital to visit the ruins; and thus the eye after recreating itself with the view

† It was thought that if he had not been prevented by Tarquin he would have established a popular government. Dionys. Halicarn. book 4. p. 243.

* Dionys. Halicarn. book 4.

of flowery meads, is pleased with the wild prospect of rocks and mountains.

THE patrician families were at all times possessed of great privileges. These distractions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the Plebeians, who wanted to reduce them. The contest struck at the constitution without weakening the government; for it was very indifferent of what family were the magistrates, provided the magistracy preserved its authority.

AN elective monarchy like that of Rome necessarily supposeth a powerful aristocratic body to support it; without which it changes immediately into tyranny or into a popular state. But a popular state has no need of this distinction of families to maintain itself. It was owing to this that the Patricians, who were a necessary part of the constitution under the regal government, became a superfluous branch under the consuls: the people could suppress them without hurting themselves, and change the constitution without corrupting it.

AFTER Servius Tullius had reduced the Patricians, it was natural that Rome should fall from the regal hands into those of the people. But the people had no occasion to be afraid of relapsing under a regal power, by reducing the Patricians.

A STATE may alter two different ways, either by the amendment or by the corruption of the constitution. If it has preserved its principles, and the constitution changes, this is owing to its amendment; if upon changing the constitution its principles are lost, this is because it has been corrupted.

THE government of Rome after the expulsion of the kings should naturally have been a democracy. The people had already the legislative power in their hands; it was their unanimous consent that had expelled the Tarquins: and if they had not continued steady to those principles, the Tarquins might easily have been restored. It is quite absurd to pretend that their design in expelling them was to render themselves slaves to a few families. The situation therefore of things required that Rome should have formed a democracy, and yet this did not happen. There was a necessity that the power of the principal families should be tempered, and that the laws should have a bias to democracy.

THE prosperity of states is often greater in the insensible transition of one constitution to another, than in either of those constitutions. Then it is that all the springs of government are upon the stretch, that the citizens assert their claims, that friendships or enmities are formed amongst the jarring parties, and that there is a noble emulation between those who defend the ancient, and those who are strenuous in promoting the new constitution.

C H A P. XIV.

In what manner the distribution of the three Powers began to change after the Expulsion of the Kings.

THERE were four things that greatly hurt the liberty of Rome. The patricians had engrossed to themselves all public employments what-

ever; an exorbitant power was annexed to the consulate; the people were frequently insulted; and, in short, they had scarce any influence at all left in the public suffrages. These four abuses were redressed by the people.

FIRST, It was regulated that the plebeians might aspire to some magistracies; and by degrees they were rendered capable of them all, except that of *Inter-rex*.

SECONDLY, The consulate was dissolved into several other magistracies §; prætors were created, on whom the power was conferred of trying private causes; quæstors * were nominated for determining those of a criminal nature; ædiles were established for the civil administration; treasurers † were made for the management of the public money; and, in short, by the creation of Censors the consuls were divested of that part of the legislative power which regulates the morals of the citizens, and the transient polity of the different bodies of the state. The chief privileges left them were to preside in the great meetings ¶ of the people, to assemble the senate, and to command the armies.

THIRDLY, The sacred laws appointed tribunes who had a power of checking the incroachments of the patricians, and prevented not only private, but likewise public injuries.

IN fine, the plebeians increased their influence in the general assemblies. The people of Rome were divided in three different manners, by centuries, by curiæ, and by tribes; and whenever they

§ Livy, 1 Decad. book 6.

* *Quæstores parricidii*, Pomponius, leg. 2. ff. de orig. Jur.

† Plutarch, *Life of Publicola*.

¶ *Censitiis censuriatis*.

gave their votes, they were assembled one of those three ways.

IN the first the patricians, the leading men, the rich, and the senate, which was very near the same thing, had almost the whole authority; in the second they had less; and less still in the third.

THE division into centuries was a division rather of estates and fortunes, than of persons. The whole people were distributed into a hundred and ninety-three centuries ♦, which had each a single vote. The patricians and leading men composed the first ninety-eight centuries; and the other ninety-five consisted of the remainder of the citizens. In this division therefore the patricians were masters of the suffrages.

IN the division into *curiæ* §, the patricians had not the same advantages: some however they had, for it was necessary to consult the augurs, who were under the direction of the patricians; and no proposal could be made there to the people, unless it had been previously laid before the senate, and approved of by a *senatus consultum*. But in the division into tribes they had nothing to do either with the augurs or with the decrees of the senate; and the patricians were excluded.

NOW the people endeavoured constantly to have those meetings by *curiæ* which had been customary by centuries; and by tribes, those they used to have before by *curiæ*; by which means the direction of public affairs soon devolved from the patricians to the plebeians.

THUS when the plebeians obtained the power

♦ See Livy, book 1, and Dionys. Halicarn. book 4, and 7.

§ Dionys. Halicarn. book 9, p. 598.

of trying the patricians, a power which commenced in the affair of Coriolanus *, they insisted upon assembling by tribes †, and not by centuries: and when the new magistracies ¶ of tribunes and ædiles were established in favour of the people, the latter obtained that they should meet by curiæ, in order to nominate them; and after their power was quite settled, they gained ♦ so far their point as to assemble by tribes to proceed to this nomination.

C H A P. XV.

In what manner Rome, in the flourishing State of that Republic, suddenly lost its Liberty.

IN the heat of the contests between the patricians and the plebeians, the latter insisted upon having fixt laws, in order that the public judgments should no longer be the effect of capricious will or arbitrary power. The senate after a great deal of resistance acquiesced; and decemvirs were appointed to compose those laws. It was thought proper to grant them an extraordinary power, because they were to give laws to parties, whose views and interests it was almost impossible to unite. The nomination of all magistrates was suspended; and the decemvirs were chosen in the comitia sole administrators of the republic. Thus they found themselves invested with the consular and the tri-

* Dionys. Halicarn. book 7.

† Contrary to the ancient custom, as may be seen in Dionys. Halicarn. book 5. p. 320.

¶ Dionys. Halicarn. book 6. p. 410. and 411.

♦ See Dionys. Halicarn. book 9. p. 650.

bunitian power. By one they had the privilege of assembling the senate, by the other that of convening the people, but they assembled neither senate nor people. Ten men only of the republic had the whole legislative, the whole executive, and the whole judiciary power. Rome saw herself inflamed by as cruel a tyranny as that of Tarquin. When Tarquin trampled on the liberty of that city, she was seized with indignation at the power he had usurped; when the decemvirs exercised every act of oppression, she was amazed at the extraordinary power she had granted.

WHAT an odd system of tyranny! a tyranny carried on by men, who had obtained the political and military power, merely from their knowledge in civil affairs; and who at that very juncture stood in need of the courage of those citizens to protect them abroad, who so tamely submitted to domestic oppression.

THE spectacle of Virginia's death, whom her father sacrificed to chastity and liberty, put an end to the power of the decemvirs. Every man became free, because every man had been injured; each shewed himself a citizen, because each had the tie of a parent. The senate and the people resumed a liberty which had been committed to ridiculous tyrants.

No people were so easily moved with public spectacles as the Romans. That of the body of Lucretia covered with blood, put an end to the regal government. The debtor who appeared in the forum covered with wounds, caused an alteration in the republic. The decemvirs owed their expulsion to the tragedy of Virginia. To condemn Manlius, it was necessary to keep the people from

seeing the capitol. The bloody garment of Cæsar flung Rome again into slavery.

C H A P. XVI.

Of the legislative Power in the Roman Republic.

THERE were no rights to contest, under the decemvirs: but upon the restoration of liberty jealousies revived; and so long as the patricians had any privileges left, they were sure to be stripped of them by the plebeians.

THE mischief would not have been so great, had the plebeians been content with this success; but they also injured the patricians as citizens. When the people assembled by curiæ or centuries, they were composed of senators, patricians, and plebeians. In their disputes the plebeians gained this point *, that they alone without patricians or senate should enact the laws called plebiscita; and the assemblies in which they were made, had the name of comitia by tribes. Thus there were cases in which the patricians † had no share in the legislative power, but § were subject to the legislation of another body of the state. This was the extravagance of liberty. The people, to establish a de-

* Dionys. Halicarn. book 11. p. 725.

† By the sacred laws, the plebeians had a power of making the plebiscita by themselves, without admitting the patricians into their assembly. Dionys. Halicarn. book 6. p. 410. and book 7. p. 430.

§ By the law enacted after the expulsion of the decemvirs, the patricians were made subject to the plebiscita, though they had not a right of voting there. Livy, book 3. and Dionys. Halicarn. book 11. p. 725 This law was confirmed by that of Publius Philo the dictator, in the year of Rome, 416. Livy, book 8.

mocracy, acted against the very principles of that government. One would have imagined that so exorbitant a power must have destroyed the authority of the senate. But Rome had excellent institutions. Two of these were especially remarkable; one by which the legislative power of the people was established, and the other by which it was limited.

THE censors, and before them the consuls ¶, modelled and created, as it were, every five years the body of the people; they exercised the legislation on the very part that was possessed of the legislative power. *Tiberius Gracchus*, says Cicero, *caused the freedmen to be admitted into the tribes not by the force of his eloquence, but by a word, by a gesture; which had he not effected, the republic, whose drooping head we are at present scarce able to uphold, would not even exist.*

ON the other hand, the senate had the power of rescuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom the prince bowed his head, and the most popular laws were silent *.

CHAP. XVII.

Of the executive Power in the same Republic.

JEALOUS as the people were of their legislative power, yet they had no great uneasiness a-

¶ In the year 512 of Rome. the consuls performed still the business of surveying the people and their estates, as appears by *Dionys. Halicarn. book 11.*

* Such as those by which it was allowed to appeal from the decisions of all the magistrates to the people.

bout the executive. This they left almost wholly to the senate and to the consuls, resolving scarce any thing more to themselves, than the right of chusing the magistrates, and of confirming the acts of the senate and of the generals.

ROME, whose passion was to command, whose ambition was to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were continually conspiring against her, or she against her enemies.

As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence, it was necessary of course that the management of affairs should be committed to the senate. Thus the people disputed every branch of the legislative power with the senate, because they were jealous of their liberty; but they had no disputes about the executive, because they were animated with the love of glory.

So great was the share the senate took in the executive power, that, as Polybius * informs us, foreign nations thought that Rome was an aristocracy. The senate disposed of the public money, and farmed out the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed, in this respect, the consuls; they fixed the number of the Roman and of the allied troops, disposed of the provinces and armies to the consuls or prætors, and upon the expiration of the year of command, had the power of appointing successors; they decreed triumphs, received and sent embassies; they nominated, rewarded, punished, and were judges of kings, declared them allies of the Roman people, or stripped them of that title.

THE consuls levied the troops which they were to carry into the field; had the command of the forces by sea and land; disposed of the forces of the allies; were invested with the whole power of the republic in the provinces; gave peace to the conquered nations, imposed conditions on them, or referred them to the senate.

IN the earliest times, when the people had some share in the affairs relating to war or peace, they exercised rather their legislative than their executive power. They scarce did any thing else but confirm the acts of the kings, and after their expulsion, those of the consuls or senate. So far were they from being the arbiters of war, that we have instances of its having been frequently declared notwithstanding the opposition of the tribunes. But growing wanton in their prosperity, they increased their executive power. Thus they * created the military tribunes, the nomination of whom till then had belonged to the generals; and some time before the first Punic war, they decreed, that only their own body should have the right † of declaring war.

* In the year of Rome 444. Livy, 1 Decad. book 9. As the war against Perseus appeared somewhat dangerous, it was ordained by a *senatus-consultum*, that this law should be suspended, and the people agreed to it. Livy, Dec. 5. book 2.

† They extorted it from the senate, says *Freinshemius*, Dec. 2. Book 6.

C H A P. XVIII.

Of the judiciary Power in the Roman Government.

THE judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed; beginning with their civil affairs.

THE consuls had § the judiciary power after the expulsion of the kings, as the prætors were judges after the consuls. Servius Tullius had divested himself of the power of determining of civil causes, which was not resumed by the consuls, except in some ¶ very rare cases, for that reason called *extraordinary**. They were satisfied with naming the judges, and establishing the several tribunals. By a discourse of *Appius Claudius*, in *Dionysius* * *Halicarnassensis*, it appears that so early as the 259th year of Rome, this was looked upon as a settled custom among the Romans; and it is not tracing it very high, to refer it to *Servius Tullius*.

THE prætor made a list † of such as he chose for the office of judges during his magistracy every year. A sufficient number was pitched upon for each cause; a custom very near the same as that now practised in England. And what was ex-

§ There is no manner of doubt but the consuls had the power of trying civil causes before the creation of the prætors. See *Livy*, Dec. 1. book 2. p. 19. *Dionys. Halicarn.* book 10. p. 627. and the same book, p. 645.

¶ The tribunes frequently tried causes by themselves only, but nothing rendered them more odious. *Dionys. Halicarn.* book 12, p. 709.

◆ *Judicia extraordinaria*. See the institutes. book 4.

* Book 6. p. 360.

† *Album Judicium*.

tremely favourable to liberty, was the prætor's fixing the judges with the § consent of the parties. The great number of exceptions that can be made in England amounts pretty near to this very custom.

THE judges decided only the questions ¶ with regard to matter of fact; for example, whether a sum of money had been paid or not, whether an act had been committed, or not. But as to questions of * law, as these required a certain capacity, they were always carried before the tribunal of the centumvirs †.

THE kings reserved to themselves the judgment of criminal affairs, and in this were succeeded by the consuls. It was in consequence of this authority that *Brutus* put his children and all those who were concerned in the Tarquinian conspiracy to death. This was an exorbitant power. The consuls, already invested with the military command, extended the exercise of it even to civil affairs; and their procedures being stripped of all forms of justice, were rather exertions of violence than legal judgments.

THIS gave rise to the *Valerian* law, by which it was made lawful to appeal to the people, from eve-

♦ "Our ancestors, says *Cicero pro Cluentio*, would not suffer any man, whom the parties had not agreed to, to be judge of the least pecuniary affair, much less of a citizen's reputation."

§ See in the fragments of the *Servilian*, *Cornelian*, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often pitched upon by choice, sometimes by lot, or, in fine, by lot, mixt together with choice.

¶ *Seneca de Benefic. lib. 3. cap. 7. in fine.*

* See *Quintilian, lib. 4. p. 54. in fol. edit. of Paris, 1541.*

† *Leg. 2. ff. de Orig. Jur.* Magistrates who were called *decemviri* presided in court, the whole under a prætor's direction.

ry decision of the consuls that endangered the life of a citizen. The consuls had no longer a power of pronouncing sentence in capital cases against a Roman citizen, without the people's consent *.

WE see in the first conspiracy for the restoration of the Tarquins, that the criminals were tried by Brutus the consul; in the second, the senate and comitia were assembled to try them †.

THE laws distinguished by the name of *Sacred*, allowed the plebeians the privilege of choosing tribunes; from whence was formed a body, whose pretensions at first were great. It is hard to determine which was greater, the insolence of the plebeians in demanding, or the condescension of the senate in granting. The Valerian law allowed of appeals to the people, that is, to the people composed of senators, patricians, and plebeians. The plebeians made a law that appeals should be brought before their own body. A question was soon after started, whether the plebeians had a right to try a patrician; this was the subject of a dispute to which the impeachment of Coriolanus gave rise, and which ended with that affair. When Coriolanus was accused by the tribunes before the people, he insisted, contrary to the spirit of the Valerian law, that as he was a patrician, none had a power to try him but the consuls; on the other hand, the plebeians also, contrary to the spirit of that same law, pretended, that none but their body were empowered to be his judges, and accordingly they pronounced sentence upon him.

* Quoniam de capite civis Romani, injussu populi Romani, non erat permissum consulibus jus dicere. See Pomponius, *Leg. 2. ff. de orig. jur.*

† Dionys. Halicarn. book 3. p. 322.

THIS was moderated by the law of the twelve tables; whereby it was ordained that none but the great assemblies of the people* should try a citizen in capital cases. Hence the body of the plebeians, or which amounts to the very same, the comitia by tribes, had no longer any power of hearing criminal causes, except such as were punished with fines. To inflict a capital punishment, a law was necessary; but to condemn to a pecuniary mulct, a *Plebsciscitum* only was necessary.

THIS regulation of the law of the twelve tables was extremely prudent. It produced an admirable balance between the body of the plebeians and the senate. For as the full judiciary power of both depended on the greatness of the punishment and the nature of the crime, it was necessary they should both agree.

THE Valerian law abolished all the remains of the Roman government, any way relative to that of the kings of the heroic times of Greece. The consuls were divested of the power to punish crimes. Though all crimes are public, yet we must distinguish between those which more nearly concern the mutual intercourse of citizens, and those which more immediately interest the state in the relation it bears to its subjects. The first are called private, the second public. The latter were tried by the people; and in regard to the former, they named by particular commission a quaestor for the prosecution of each crime. The person chosen by the people was frequently one of the magistrates, sometimes a private man. He was called the *qua-*

* The Comitia by centuries. Thus Manlius Capitolinus was tried in these Comitia. Livy, Dec. 1, book 6. p. 60.

for of Parricide, and is mentioned in the law of the twelve tables *.

THE quæstor nominated the judge of the question, who drew lots for the judges, and regulated the tribunal, in which he presided †.

IT is proper here to observe what share the senate had in the nomination of the quæstor, that we may see how far the two powers were balanced. Sometimes the senate caused a dictator to be chosen, in order to exercise the office of quæstor §; at other times they ordained that the people should be convened by a tribune, with a view of proceeding to the nomination of a quæstor ¶: and, in fine, the people frequently appointed a magistrate to make his report to the senate concerning a particular crime, and to desire them to nominate a quæstor, as may be seen in the judgment upon *Lucius Scipio* * in Livy †.

IN the year of Rome 604, some of these commissions were rendered permanent §. All criminal causes were gradually divided into different parts; to which they gave the name of *perpetual questions*. Different prætors were created, to each of whom some of those questions were assigned.

* *Pomponius*, in the second Law in the Digest. de Orig. Jur.

† See a fragment of *Ulpian*, who gives another of the *Cornelian law*: it is to be met with in the *Collation of the Mosaic and Roman laws*, tit. 1. de sicariis & homicidiis.

§ This took place especially in regard to the crimes committed in Italy, which were subject chiefly to the inspection of the senate. See *Livy*, 1 Dec. book 9. concerning the conspiracies of *Capua*.

¶ This was the case in the prosecution for the murder of *Posthumus*, in the year 340 of Rome. See *Livy*.

* This judgment was passed in the year of Rome 567.

† Book 8.

§ *Cicero* in *Bruto*.

They had a power conferred upon them for the term of a year, of trying such criminal causes as were any way relative to those questions, and then they were sent to govern their province.

AT Carthage the senate of the hundred was composed of judges who enjoyed that dignity for life. But at Rome the prætors were annual; and the judges were not even for so long a term, but were nominated for each cause. It has been already shewn in the sixth chapter of this book, how favourable this regulation was to liberty in particular governments.

THE judges were chosen from the order of senators, till the time of the Gracchi. *Tiberius Gracchus* caused a law to pass, that they should be taken from the Equestrian order; a change so very considerable, that the tribune boasted of having cut, by one *rogation* only, the sinews of the senatorian dignity.

IT is necessary to remark, that the three powers may be very well distributed in regard to the liberty of the constitution, though not so well in respect to the liberty of the subject. At Rome the people had the greatest share of the legislative, a part of the executive, and part of the judiciary power; by which means they had so great a weight in the government, as required some other power to balance it. The senate indeed had part of the executive power, and some share of the legislative*; but this was not sufficient to counterbalance the

† This is proved from Livy, book 43, who says that Hannibal rendered their magistracy annual.

* The *senatus-consultum* were of force for the space of a year, though not confirmed by the people. Dionys. Halicarn. book 9. p. 595, and book 11. p. 735.

weight of the people. It was necessary that they should partake of the judiciary power; and accordingly they had a share when the judges were chosen from among the senators. But when the Gracchi deprived the senators of the judicial power, the senate were no longer able to withstand the people. To favour therefore the liberty of the subject, they struck at that of the constitution; but the former perished with the latter.

FROM thence arose infinite misfortunes. The constitution was changed at a time when the fire of civil discord had scarce left any such thing as a constitution. The knights ceased to be that middle order which united the people to the senate; and the chain of the constitution was broke.

THERE were even particular reasons against transferring the judiciary power to the equestrian order. The constitution of Rome was founded on this principle, that none should be enlisted as soldiers, but such as were men of sufficient property to answer for their conduct to the republic. The knights, as persons of the greatest property, formed the cavalry of the legions. But when their dignity increased, they refused to serve any longer in that capacity; and another kind of cavalry was obliged to be raised: thus Marius enlisted all sorts of people into his army, and soon after the republic was ruined*.

BESIDES, the knights were the farmers of the revenue; men whose great rapaciousness increased the public calamities. Instead of giving to such as those the judicial power, they ought to have been continually under the eye of the judges. This we

† In the year 630.

* *Capite census plerisque.* Sallust. de bello Jugurth.

must say in commendation of the ancient French laws; that they have acted towards the officers of the revenue with as great a diffidence as would be observed between enemies. When the judiciary power at Rome was transferred to the publicans, there was then an end of all virtue, polity, laws, and government.

Of this we find a very ingenuous description in some fragments of Diodorus Siculus and Dio. *Mutius Scevola*, says Diodorus †, *wanted to revive the ancient manners and the laudible custom of sober and frugal living. For his predecessors having entered into a contract with the farmers of the revenue, who at that time were possessed of the judiciary power at Rome, had infected the province with all manner of corruption. But Scevola made an example of the publicans, and imprisoned those by whom others had been confined.*

Dio informs us §, that Publius Rutilius his lieutenant was equally obnoxious to the equestrian order, and that upon his return they accused him of having received some presents, and condemned him to a fine; upon which he immediately made a cession of his goods. His innocence appeared in this, that he was found to be worth a great deal less than what he was charged with having extorted, and he shewed a just title to what he possessed: but he would not live any longer in the same city with such profligate wretches.

* THE Italians, says Diodorus again, bought up

† Fragment of this author, book 36, in the collection of Constantine Porphyrogenitus, of *virtues and vices*.

§ Fragment of his history, taken from the *Extract of virtues and vices*.

• Fragment of the 34th book in the *Extract of virtues and vices*.

whole droves of slaves in Sicily, to till their lands, and to take care of their cattle; but refused them a necessary subsistence. These wretches were then forced to go and rob on the high-ways, armed with lances and clubs, covered with beasts skins, and followed by large mastiffs. Thus the whole province was desolated, and the inhabitants could not call any thing their own, but what was secured by fortresses. There was neither proconsul nor prætor, that could or would oppose this disorder, or that presumed to punish these slaves, because they belonged to the knights, who at Rome were possessed of the judiciary power †. And yet this was one of the causes of the war of the slaves. But I shall add only one word more. A profession deaf and inexorable, that can have no other view than lucre, that was constantly asking and never granting, that impoverished the rich and increased even the misery of the poor; such a profession, I say, should never have been intrusted with the judiciary power at Rome.

C H A P. XIX.

Of the Government of the Roman Provinces.

SUCH was the distribution of the three powers in Rome. But they were far from being thus distributed in the provinces: Liberty prevailed in the center, and tyranny in the extreme parts.

WHILE Rome extended her dominions no farther than Italy, the people were governed as con-

† Penes quos Romæ tum judicium erant, atque ex equestri ordine forent sortito iudices eligi in causa Prætorum & Proconsulorum. quibus post administratam provinciam dies dicta erat.

federates; and the laws of each republic were preserved. But when she enlarged her conquests, and the senate had no longer an immediate inspection over the province, nor the magistrates residing at Rome were any longer capable of governing the empire, they were obliged to send prætors and proconsuls. Then it was the harmony of the three powers was lost. The persons appointed to that office were intrusted with a power which comprehended that of all the Roman magistracies; nay even that of the people *. They were despotic magistrates, vastly well adapted to the distance of the places to which they were destined. They exercised the three powers; and were, if I may presume to use the expression, the bashaws of the republic.

It has been already remarked, that in a common-wealth the same magistrate ought to be possessed of the executive power, as well civil as military. Hence a conquering republic can hardly communicate her government, and rule the conquered state according to her own constitution. And indeed as the magistrate she sends to govern is invested with the executive power, both civil and military, he must likewise have the legislative: for who is it that could make laws without him? It is necessary therefore that the governor she sends be intrusted with the three powers, as was practised in the Roman provinces.

It is more easy for a monarchy to communicate its government, because the officers it sends have, some the civil executive, and others the military executive power; which does not necessarily imply a despotic authority.

* They made their edicts upon entering the provinces.

IT was a privilege of the utmost consequence to a Roman citizen, to have none but the people for his judges. Were it not for this, he would have been subject in the provinces to the arbitrary power of a proconsul or of a proprætor. The city never felt the tyranny, which was exercised only on conquered nations.

THUS in the Roman world, as at Sparta, the freemen enjoyed the highest degree of liberty, while those who were slaves laboured under the extremity of servitude.

WHILE the citizens paid taxes, they were raised with great justice and equality. The regulation of Servius Tullius was observed, who had distributed the people into six classes, according to their difference of property, and fixed the several shares of the public taxes in proportion to that which each person had in the government. Hence they bore with the greatness of the tax, because of their proportionable greatness of credit, and consoled themselves for the smallness of their credit, because of the smallness of the tax.

THERE is likewise another thing worthy of admiration, which is, that as Servius Tullius's division into classes was in some measure the fundamental principle of the constitution, it thence followed, that an equal levying of the taxes was so connected with this fundamental principle, that the one could not be abolished without the other.

BUT while the city paid the taxes as she pleased or paid none at all *, the provinces were plundered by the knights, who were the farmers of the public revenue. We have already taken notice of

* After the conquest of Macedonia the Romans paid no taxes.

their oppressive extortions, with which all history abounds.

All Asia, says Mithridates †, expects me as her deliverer; so great is the hatred which the rapaciousness of the proconsuls §, the confiscations made by the officers of the revenue, and the quirks and cavils of judicial proceedings, have excited against the Romans.*

HENCE it was that the strength of the provinces did not increase, but rather weakened the strength of the republic. Hence it was that the loss of the liberty of Rome was looked upon by the provinces as the epocha of their own freedom.

CHAP. XX.

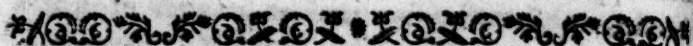
The Conclusion of this Book.

I Should be glad to inquire into the distribution of the three powers, in all the moderate governments we are acquainted with, in order to calculate the degrees of liberty which each may enjoy. But we must not always exhaust a subject so as to leave no work at all for the reader. My business is to make people think, and not to read.

† Speech taken from Probus Pompeius, and related by Justin, book 38.

§ See the orations against Verres.

* It is well known what sort of a tribunal was that of Verus, which provoked the Germans to revolt.



B O O K XII.

Of the Laws that form political Liberty, as relative to the Subject.

C H A P. I.

Idea of this Book.

IT is not sufficient to have treated of political liberty as relative to the constitution; we must also examine it in the relation it bears to the subject.

IT has been already observed, that in the former case it arises from a certain distribution of the three powers; but in the latter, we must consider it in another light. It consists in security, or in the opinion people have of their security.

THE constitution may happen to be free, and the subject not. The subject may be free, and not the constitution. In those cases, the constitution will be free by right, and not in fact; the subject will be free in fact and not by right.

IT is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty with respect to the constitution. But as it regards the subject; manners, customs, or received examples may give rise to it, and particular civil laws may encourage it, as shall be observed in this book.

FARTHER, as in most states liberty is more checked or depressed than their constitution re-

quires, it is necessary to treat of the particular laws that in each constitution are apt to assist or check the principle of liberty, which each state is capable of receiving.

CHAP. II.

Of the Liberty of the Subject.

PHILOSOPHICAL liberty consists in the free exercise of the will; or at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will. Political liberty consists in security, or at least in the opinion that we enjoy security.

THIS security is never more dangerously attacked than in public or private accusations. It is therefore on the goodness of criminal laws that the liberty of the subject chiefly depends.

CRIMINAL laws did not receive their full perfection all at once. Even in places where liberty has been most sought after, it has not been always found. We are informed by Aristotle *, that at Cumæ, the parents of the accuser might be witnesses. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced sentence against the children of Ancus Martius, who were charged with having assassinated the king his father-in-law †. Under the first kings of France Clotaire made a law §, that nobody should be condemned without being heard; which shews that a contrary custom had prevailed in some particular case.

* Politics, book 2.

† Tarquinius Priscus. See Dionysius Halicarn. book 4.

§ So early as the year 560.

or among some barbarous people. It was Charondas that first established penalties against false witnesses. When the subject has no fence to secure his innocence, he has none for his liberty.

THE knowledge already acquired in some countries, or that may be hereafter attained in others, concerning the surest rules to be observed in criminal judgments, is more interesting to mankind than any other thing in the world.

LIBERTY can be founded on the practice of this knowledge only; and supposing a state to have the best laws imaginable in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty than a bashaw enjoys in Turkey.

CH A P. III.

Continuation of the same Subject.

THOSE laws which condemn a man to death on the deposition of a single witness, are fatal to liberty. In right reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale.

THE Greeks * and Romans † required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was established by the Gods §; but this may be said more justly of ours.

¶ Aristot. Polit. book 2. chap. 12. He gave his laws at Thurium, in the 84th Olympiad.

* See Ariſtid. Orat. in Minervam.

† Dionys. Halicarn. on the judgment of Coriolanus, book 7.

§ Minervæ calculus.

C H A P. IV.

That Liberty is favoured by the nature and proportion of Punishments.

LIBERTY is in its highest perfection, when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

THERE are four kinds of crimes. Those of the first species are prejudicial to religion, the second to morals, the third to the public tranquillity, and the fourth to the security of the subject. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern religion, I rank only those which attack it directly, such as all simple sacrileges. For as to crimes that disturb the exercise of it, they are of the nature of those which prejudice the tranquillity or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the nature of the thing*, it should consist in depriving people of the advantages conferred by religion in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their

* St. Lewis made such severe laws against those who swore, that the pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws. See his ordinances.

presence, in execrations, comminations, and conjurations.

IN things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public act, there can be no criminal matter; the whole passes betwixt man and God, who knows the measure and time of his vengeance. Now if magistrates confounding things, should inquire also into hidden sacrileges, this inquisition would be directed to a kind of action that does not at all require it; the liberty of the subject would be subverted by arming the zeal of timorous, as well as of presumptuous consciences against him.

THE mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honour the Deity, and leave him to avenge his own cause. And indeed, were we to be directed by such a notion, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the weakness, ignorance, and caprice of man.

AN historian * of Provence relates a fact, which furnishes us with an excellent description of the consequences that may arise in weak capacities from the notion of avenging the cause of the Deity. A Jew was accused of having blasphemed against the Virgin Mary; and upon conviction, was condemned to be staid alive. An odd spectacle was then exhibited; gentlemen masked, with knives in their hands, mounted the scaffold, and drove away the executioner, in order to be the avengers themselves.

* Father Bougerel.

of the honour of the blessed Virgin.—I do not here chuse to anticipate the reflections of the reader.

THE second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continence, that is of the police directing the manner in which the pleasure annexed to the conjunction of the sexes is to be enjoyed. The punishment of those crimes ought to be likewise derived from the nature of the thing; the privation of such advantages as society has attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and in a word all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect, these things are less founded on malice than on carelessness and self neglect.

WE speak here of none but crimes which relate merely to morals, for as to those that are also prejudicial to the public security, such as rapes, they belong to the fourth species.

THE crimes of the third class are those which disturb the public tranquillity. The punishments ought therefore to be derived from the nature of the thing, and to be relative to this tranquillity; such as imprisonment, exile, and other-like chastisements, proper for reclaiming turbulent spirits, and obliging them to conform to the established order.

I CONFINE those crimes that injure the public tranquillity to things which imply a bare offence against the police; for as to those which by disturbing the public peace attack at the same time the security of the subject, they ought to be ranked in the fourth class.

THE punishments inflicted upon the latter crimes are such as are properly distinguished by that name. There are a sort of retaliation, by which the society refuses security to a member, who has actually or intentionally deprived another of his security. These punishments are derived from the nature of the thing, founded on reason, and drawn from the very source of good and evil. A man deserves death when he has violated the security of the subject so far as to deprive, or to attempt to deprive, another man of his. This punishment of death is the remedy, as it were, of a sick society. When there is a breach of security with respect to property, there may be some reasons for inflicting a capital punishment: but it would be much better, and perhaps more natural, that crimes committed against the security of property should be punished with the loss of property; and this ought indeed to be the case if men's fortunes were common or equal. But as those who have no property of their own are commonly the readiest to attack that of others, it has been found necessary, instead of a pecuniary, to substitute a corporal punishment.

ALL that I have here advanced is founded in nature, and vastly favourable to the liberty of the subject.

CH A P. V.

Of certain Accusations that require particular Moderation and Prudence.

IT is an important maxim, that we ought to be very circumspect in the prosecution of witch-

craft and heresy. The accusation of these two crimes may be extremely injurious to liberty, and productive of infinite oppression, if the legislator knows not how to set bounds to it. For as it does not directly point at a person's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is sure to be always in danger, because the most unexceptionable conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of his being guilty of the like crimes.

UNDER Manuel Comnenus, the *Protestator* * was accused of having conspired against the emperor, and of having employed for that purpose some secrets that render men invisible. It is mentioned in the life of this emperor † that *Aaron* was detected as he was poring over a book of Solomon's, the perusing of which was sufficient to conjure up whole legions of devils. Now by supposing a power in witchcraft to rouse the infernal spirits to arms, people look upon a man whom they call a sorcerer as the person in the world most likely to disturb and subvert society; and consequently they are disposed to punish him with the utmost severity.

BUT their indignation increases, when witchcraft is supposed to have a power of subverting religion. The history of Constantinople § informs us, that in consequence of a revelation made to a bishop of a miracle's having ceased because of the magic practices of a certain person, both that person and his son were put to death. On how ma-

* *Nicetas*, life of Manuel Comnenus, book 4.

† *Ibid.*

§ History of the emperor Maurice by *Theophylactus*, chap. 12.

ny surprizing things did not this single crime depend! That revelations should not be uncommon, that the bishop should be favoured with one, that it was real, that there had been a miracle in the case, that this miracle had ceased, that there was an art magic, that magic could subvert religion, that this particular person was a magician, and, in short, that he had committed that magic act.

THE emperor *Theodorus Lascaris* attributed his illness to witchcraft. Those who were accused of this crime, had no other resource left than to handle a red hot iron without being hurt. Thus among the Greeks a person ought to have been a forcerer to be able to clear himself of the imputation of witchcraft. Such was the excess of their stupidity, that to the most dubious crime in the world they joined the most dubious proofs of innocence.

UNDER the reign of *Philip the Long*, the Jews were expelled from France, being accused of having poisoned the springs with their lepers. So foolish an accusation ought to make us doubt of all those that are founded on public hatred.

I HAVE not here asserted that heresy ought not to be punished; I said only that we ought to be very circumspect in punishing it.

CH A P. VI.

Of the Crime against Nature.

GOD forbid that I should have the least inclination to diminish the general detestation of a crime which religion, morality, and civil government equally condemn. It ought to be pro-

scribed were it only for its communicating to one sex the weaknesses of the other, and for leading people by a scandalous prostitution of their youth, to an ignominious old age. What I shall say concerning it will no ways lessen its infamy, being levelled only against the tyranny that may abuse the very horror we ought to have against the vice.

As a natural circumstance of the crime is secrecy, there are frequent instances of its having been punished by legislators upon the deposition of a child. This was opening a very wide door to calumny. *Justinian*, says *Procopius* *, *published a law against this crime; he ordered an enquiry to be made not only against those who were guilty of it, after the enacting of that law, but even before. The deposition of a single witness, sometimes of a child, sometimes of a slave, was sufficient, particularly against such as were rich, and against those of the green faction.*

IT is very odd that these three crimes, witchcraft, heresy, and that against nature, of which the first might easily be proved not to exist; the second to be susceptible of a vast number of distinctions, interpretations, and limitations; the third to be often obscure and uncertain; it is very odd, I say, that these three crimes should amongst us be punished with fire.

I MAY venture to affirm that the crime against nature will never make any great progress in society, unless people are prompted to it by some particular custom, as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is diffused; as amongst the Asiatics, where parti-

* Secret history.

cular persons have an infinite number of women whom they despise, while others can have none at all. Let there be no customs preparatory to this crime; let it like every other violation of morals, be severely proscribed by the civil magistrate; and nature will soon defend or resume her rights. Nature, that fond, that indulgent parent, has strewed her pleasures with a liberal hand, and while she fills us with delights, she prepares us by means of our issue, in whom we see ourselves, as it were, reproduced; she prepares us, I say, for future satisfactions of a more exquisite nature than those very delights.

CHAP. VII.

Of the Crime of High-treason.

IT is determined by the laws of China, that whosoever shews any disrespect to the emperor is to be punished with death. As they mention not in what this disrespect consists, every thing may furnish a pretext to take away a man's life, and to exterminate any family whatsoever.

Two persons of that country, who were employed to write the court gazette, having inserted some circumstances relating to a certain fact that were not true, it was pretended that to tell a lie in the court gazette was a disrespect shewn to the court, in consequence of which they were put to death*. A prince of the blood having inadvertently made some mark on a memorial signed with the red pencil by the emperor, it was determined that he had behaved disrespectfully to the sove-

* Father Du Halde, Tom. 1. p. 43.

reign; which occasioned one of the most cruel persecutions against that family that ever was recorded in history †.

If the crime of high-treason be indeterminate, this alone is sufficient to make the government degenerate into arbitrary power. I shall descant more largely on this subject, when I come to treat of the composition of laws.

C H A P. VIII.

Of the bad Application of the Name of Sacrilege and High-treason.

IT is also a terrible abuse to give the appellation of high-treason to an action that does not deserve it. By an imperial law †, it was decreed that those who called in question the sovereign's judgment, or doubted of the merit of such as he had chosen for a public office, should be prosecuted as guilty of sacrilege §. Surely it was the cabinet council and the prince's favourites who invented that crime. By another law it was determined, that whoever made any attempt to injure the ministers and officers belonging to the sovereign, should be deemed guilty of high-treason, as if he had attempted to injure the sovereign himself *. This law is owing to two princes †, remar-

† Father Parennin in the edifying letters.

‡ Gratian, Valentinian, and Theodosius. This is the second in the Code de Crimin. Sacril.

§ *Sacrilegii instar est dubitare an is dignus sit quem elegerit Imperator.* ibid. This law served as a model to that of Roger in the constitutions of Naples, Tit. 4.

* The 5th law *ad leg. Jul. Maj.*

† Arcadius and Honorius.

kable for their weakness; princes who were led by their ministers, as flocks by shepherds; princes who were slaves in the palace, children in the council, strangers to the army; princes, in short, who preserved their authority only by giving it away every day. Some of those favourites conspired against their sovereigns. Nay, they did more, they conspired against the empire; they called in barbarous nations; and when the emperors wanted to stop their progress, the state was so enfeebled, as to be under a necessity of infringing the law, and of exposing itself to the crime of high-treason in order to punish those favourites.

AND yet this is the very law which the judge of Monsieur de Cinq-Mars built upon ♦, when, endeavouring to prove that the latter was guilty of the crime of high-treason, for attempting to remove Cardinal Richelieu from the ministry, he says, *Crimes that aim at the persons of ministers, are deemed, by the Imperial constitutions, of equal consequence with those which are levelled against the emperor's own person. A minister discharges his duty to his sovereign and to his country: to attempt therefore to remove him, is endeavouring to deprive the former of one of his arms §, and the latter of part of its power. It is impossible for the meanest tools of power to express themselves in more servile language.*

By another law of Valentinian, Theodosius, and Arcadius *, false coiners are declared guilty of high-treason. But is not this confounding the

♦ *Memoirs of Montesquieu, Tom. 3.*

§ *Nam ipsi pars corporis nostri sunt.* The same law of the Code *ad leg. Jul. Maj.*

* It is the 9th of the Code Theodos. *de falsa moneta.*

ideas of things? Is not the very horror of high-treason diminished, by giving that name to another crime?

CHAP. IX.

Continuation of the same Subject.

PAULINUS having written to the emperor Alexander, that "he was preparing to prosecute for high-treason a judge who had decided contrary to his edict;" the emperor answered, "that under his reign there was no such thing as indirect high-treason ♦.

FAUSTINIAN wrote to the same emperor, that as he had sworn by the prince's life never to pardon his slave, he found himself thereby obliged to perpetuate his wrath, lest he should incur the guilt of high-treason. Upon which the emperor answered, "Your fears are groundless §, and you are a stranger to my principles."

IT was determined by a *senatus-consultum*, that whosoever melted down any of the emperor's statues, which happened to be rejected, should not be deemed guilty of high-treason. The emperors Severus and Antoninus wrote to Pontius †, that those who sold unconsecrated statues of the emperor should not be charged with high-treason. The same princes wrote to Julius Cassianus, that if a per-

♦ *Etiam ex aliis causis majestatis crimina cessant meo saeculo. Leg. 1. cod. ad leg. Jul. Maj.*

§ *Alienam sectam meam sollicitudinem concepisti. Leg. 2. cod. ad leg. Jul. Maj.*

* See the 4th law in ff. *ad leg. Jul. Maj.*

† See the 5th law, *ibid.*

son throwing a stone should by chance strike one of the emperor's statues, he should not be liable to a prosecution for high-treason ¶. The Julian-law requires this kind of limitations; for in virtue of this law the crime of high-treason was charged not only upon those who melted down the emperor's statues, but also on those who committed any such like action ♦, which made it an arbitrary crime. When a number of crimes of high-treason had been established, they were obliged to distinguish the several sorts. Hence Ulpian the civilian, after saying that the accusation of high-treason did not die with the criminal, adds, that this does not relate to § all the treasonable acts established by the Julian law, but only to that which implies an attempt against the empire, or against the life of the emperor.

CHAP. X.

Continuation of the same Subject.

THERE was a law passed in England under Henry VIII. by which whoever predicted the king's death was declared guilty of high-treason. This law was extremely vague; the terror of despotic power is so great, that it recoils upon those who exercise it. In this king's last illness, the physicians would not venture to say he was in danger; and certainly they acted very right *.

¶ See the 5th in law ff. *ad leg. Jul. Maj.*

♦ *Aludve quid simile admiserint.* Leg. 6. ff. *ad leg. Jul. Maj.*

§ In the last law in the ff. *ad leg. Jul. de Adulteriis.*

* See Burnet's History of the Reformation.

C H A P. XII.

Of Thoughts.

ONE night *Marfyas* dreamt that he had cut *Dionysius's* throat †. *Dionysius* put him to death, pretending that he would never have dreamt of such a thing by night, if he had not thought of it by day. This was a most tyrannical action; for though it had been the subject of his thoughts, yet he had made no attempt ¶ towards it. The laws did not take upon them to punish any other than exterior acts.

C H A P. XII.

Of indiscreet Speeches.

NOTHING renders the crime of high-treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to interpretation; there is so great a difference between indiscretion and malice; and there is often so little of the latter in the freedom of expression, that the law can hardly subject people to a capital punishment for words, unless it expressly declares what words they are ♦.

WORDS do not constitute an overt act; they remain only in idea. When considered by them-

† *Plutarch's* life of *Dionysius*.

¶ The thought must be joined with some sort of action.

♦ *Si non tale sit delictum in quod vel scriptura legis descendit vel ad exemplum legis vindicandum est*; says *Modestinus* in the seventh law, in *f. ad leg. Jul. Maj.*

selves, they have generally no determinate signification; for this depends on the tone in which they are uttered. It frequently happens, that in repeating the same words, they have not the same signification; this depends on their connection with other things; and sometimes more is meant by silence than by any expression whatever. Since there can be nothing so equivocal and ambiguous as all this, how is it possible to convert it into a crime of high-treason? Wherever this law is established, there is an end not only of liberty, but even of its very shadow.

IN the manifesto of the late Czarina against the family of the d'Olgorucky's II, one of these princes is condemned to death for having spoken indifferently concerning her person; another for having maliciously interpreted her imperial laws, and for having offended her sacred person by disrespectful expressions.

NOT that I pretend to lessen the just indignation of the public against those who presume to stain the glory of their sovereign; what I mean is, that if despotic princes are willing to moderate their power, a milder chastisement would be more proper on these occasions, than the charge of high-treason, a thing always terrible even to innocence itself.

OVERT acts happen not every day; they are exposed to the eye of the public; and a false charge with regard to matters of fact may be easily detected. Words carried into action assume the nature of that action. Thus a man who goes into a pub-

§ In 1740.

◆ *Nec lubricum lingua ad penam facile trabendum est.* Modestinus in the 7th law in ff. ad leg. Jul. Maj.

lic market-place to incite the subject to revolt, incurs the guilt of high-treason, because the words are joined to the action, and partake of its nature. It is not the words that are punished, but an action in which words are employed. They do not become criminal, but when they are joined to a criminal action: every thing is confounded, if words are construed into a capital crime, instead of considering them only as a mark of that crime.

THE emperors *Theodosius*, *Arcadius*, and *Honorius*, wrote thus to *Rufinus*, who was *præfectus prætorio*. Though a man should happen to speak amiss of our person, or government, we do not intend to punish him: if he has spoken through levity, we must despise him; if through folly, we must pity him; and if he wrongs us, we must forgive him. Therefore leaving things as they are, you are to inform us accordingly, that we may be able to judge of words by persons, and that we may duly consider whether we ought to punish or overlook them.

C H A P. XIII.

Of Writings.

THERE is something more permanent in writings than in words; but when they are no way preparative to high-treason, they cannot amount to that charge.

AND yet *Augustus* and *Tiberius* subjected satirical writers to the same punishment as for having

♦ Si id ex levitate processerit, contemnendum est; si ex insomia, miseratione dignissimum; si ab injuria, remittendum, Leg. unica Cod. Si quis Imperat. maled.

violated the law of majesty. Augustus^{||}, because of some libels that had been written against persons of the first quality; Tiberius, because of those which he suspected to have been written against himself: Nothing was more hurtful to Roman liberty. *Crematius Cordus* was accused of having called *Calpurnius* in his annals the last of the Romans †.

SATYRICAL writings are hardly known in despotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered for the very same reason, which makes them be prohibited in monarchies: Being commonly levelled against men of power and authority, they flatter the malignancy of the people, who are the governing party. In monarchies they are forbidden, but rather as a subject of civil animadversion, than as a capital crime. They may amuse the general malevolence, please the malecontents, diminish the envy against public employments, give the people patience to suffer, and make them laugh at their sufferings.

BUT no government is so averse to satyirical writings as the aristocratical. There the magistrates are petty sovereigns, but not great enough to despise affronts. If in a monarchy a satyirical stroke is designed against the sovereign, he is placed on such an eminence that it does not reach him; but an aristocratical lord is pierced to the very heart. Hence the decemvirs, who formed

|| *Tacitus's Annals*, book 1. This continued under the following reigns. See the first law in the *Code de famofis libellis*.

† *Tacit. Annal*, book 4.

an aristocracy, punished satyrical writings with death †.

CHAP. XIV.

Breach of Modesty in punishing Crimes.

THERE are rules of modesty observed by almost every nation in the universe; now it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought ever to be the establishment of order.

WAS it the intent of those eastern nations who exposed women to elephants trained up for an abominable kind of punishment, was it, I say, their intent to establish one law by the breach of another?

By an ancient custom of the Romans, girls were not allowed to be put to death till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner, before they were brought to the place of punishment †: that bloody and subtle tyrant destroyed the morals of the people to preserve their customs.

WHEN the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all four like beasts, modesty was shocked §: but when they wanted to compel a mother—— when they wanted to force a son—— I cannot proceed; even nature herself is shocked at it.

† The law of the twelve tables.

‡ Suetonius in *Tiberio*.

§ Collection of voyages that contributed to the establishment of the East-India company, Tom. 5. Part 2.

C H A P. XV.

Of the infranchisement of Slaves in order to accuse their Master.

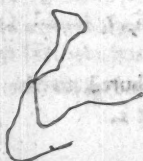
AUGUSTUS made a law that the slaves of those who conspired against his person should be sold to the public, that they might depose against their master †. Nothing ought to be neglected which may contribute to the discovery of an heinous crime; it is natural therefore that in a government where there are slaves they should be permitted to inform; but they ought not to be admitted as witnesses.

VINDEX discovered the conspiracy that had been formed in favour of Tarquin; but he was not admitted a witness against the children of Brutus. It was right to give liberty to a person who had rendered so great a service to his country; but it was not given him with a view of enabling him to render this service.

HENCE the emperor Tacitus ordained that slaves should not be admitted as witnesses against their masters, even in the case of high-treason †: a law which was not inserted in Justinian's compilation.

† Dio in Xiphilius.

‡ Flavius Vopiscus in his life.



CHAP. XVI.

Of Calumny with respect to the Crime of High-treason.

TO do justice to the Cæsars, they were not the first devisers of the cruel laws which they enacted. It was Sylla * that taught them that calumniators ought not to be punished; but the abuse was soon carried to such an excess as to reward them †.

CHAP. XVII.

Of the revealing of Conspiracies.

IF thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, *Let us go and serve other gods*, thou shalt surely kill him, thou shalt stone him §. This law of Deuteronomy cannot be a civil law among most of the nations known to us, because it would pave the way for every kind of wickedness.

No less severe is the law of several countries, which commands the subjects, on pain of death, to disclose conspiracies in which they are not even so

* Sylla made a law of Majesty, which is mentioned in Cicero's orations, *pro Cluentio*, Art. 3. in *Pisonem*, Art. 21, 22 against Verres, Art. 5. familiar epistles, Book 3. Letter 11. Cæsar and Augustus inserted them in the Julian laws; others made additions to them.

† *Et quo quis distinctior accusator, eo magis honores assequatur, ac veluti sacrosanctus erat.* Tacit.

§ Deuteron. chap. 13. v. 6, 7, 8, and 9.

much as concerned. When such a law is established in a monarchical government, it is very proper it should be under some restrictions.

It ought not to be applied in its full severity, but to the strongest cases of high-treason. In those countries it is of the utmost importance not to confound the various degrees of this crime. In Japan, where the laws subvert every idea of human reason, the crime of concealment is applied even to the most ordinary cases.

A CERTAIN relation † makes mention of two young ladies, who were shut up for life in a box thick set with pointed nails, one for having had a love intrigue, and the other for not discovering it.

C H A P. XVIII.

How dangerous it is in Republics to be too severe in punishing the Crime of High-treason.

AS soon as a republic has compassed the destruction of those who wanted to overthrow it, there should be an end of terrors, punishments, and even rewards.

GREAT punishments, and of course great changes, cannot take place without investing some citizens with an exorbitant power. It is therefore more advisable in this case to exceed in lenity, than in severity; to banish but few, rather than many; and to leave them their estates, instead of making an infinite number of confiscations. Under pretence of avenging the republic's cause, the

† Collection of voyages that contributed to the establishment of the East-India company, p. 423. book 5. part 2d.

avengers would establish tyranny. The business is not to destroy the rebel but the rebellion. They ought to return as quick as possible into the usual track of government, in which every one is protected by the laws, and no one injured.

THE Greeks set no bounds to the vengeance they took of tyrants, or of those they suspected of tyranny; they put their children to death †, nay sometimes five of their nearest relations ¶; and they proscribed a vast number of families. By such means their republics suffered the most violent shocks; banishments, or the return of those that were banished, were always epochas that indicated a change of the constitution.

THE Romans had more sense. When Cassius was put to death for having aimed at tyranny, the question was proposed whether his children should undergo the same fate: but they were preserved. *They, says Dionysius Halicarnassæus *, who wanted to change this law at the end of the Marrian and civil wars, and to exclude from public offices the children of those who had been proscribed by Sylla, are very much to blame.*

WE find in the wars of Marius and Sylla to what excess the Romans had gradually carried their barbarity. Such scenes of cruelty it was hoped would never be revived. But under the triumvirs, they committed greater acts of oppression, though with some appearance of lenity; and it is provoking to see what sophisms they make use of to con-

† Dionys. Halicarn. Roman Antiquities, Book 8.

¶ *Tyranno occiso quinque ejus proximos cognatione magistratus necato.* Cic. de invent. lib. 2.

* Book 8. p. 547.

ceal their inhumanity. Appian has given us † the formula of the proscriptions. One would imagine they had no other aim than the good of the republic: with such tranquillity do they express themselves; such advantages do they point out to the state; such expediency do they shew in the means they adopt; such security do they promise to the wealthy; such peaceableness to the poor; so apprehensive do they seem of endangering the lives of the citizens; so desirous of appeasing the soldiers; such felicity in fine do they presage to the commonwealth *.

ROME was drenched in blood, when Lepidus triumphed over Spain: yet by an unparalleled absurdity he ordered public rejoicings in that city, upon pain of proscription †.

CHAP. XIX.

On what manner the Use of Liberty is suspended in a Republic.

IN countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in England what they call *Bills of Attainder* §. These are relative to those Athenian laws by which a private person was con-

* Of the civil wars, Book 4.

† *Quod felix faustumque sit.*

‡ *Sacris et epulis dent hunc diem: qui secus faxit, inter proscriptos esto.*

§ It is not sufficient in the courts of justice of that kingdom, that the evidence be of such a nature as to satisfy the judges; there must be a legal proof; and the law requires the deposition of two witnesses

demned ¶, provided they were made by the unanimous suffrage of six thousand citizens. They are likewise relative to those laws which were made at Rome against private citizens, and were called *privileges* ♦. These were never passed but in the great meetings of the people. But in what manner soever they were enacted, Cicero was for having them abolished, because the force of a law consists in its being made for the whole community §. I must confess, notwithstanding, that the practice of the freest nation that ever existed induces me to think, that there are cases in which a veil should be drawn for a while over liberty, as it was customary to cover the statues of the gods.

against the accused. No other proof will do. Now if a person who is thought to be guilty of high-treason, should contrive to secrete the witnesses, so as to render it impossible for him to be legally condemned, the government then may bring a bill of attainder against him; that is, they may enact a particular law for that single fact. They proceed then in the same manner as in all other bills brought into parliament; it must pass the two houses, and have the king's consent; otherwise it is not a bill; that is, a sentence of the legislature. The person accused may plead against the bill by council, and the members of the house may speak in defence of the bill.

¶ *Legem de singulari aliquo ne rogato, nisi sex millibus ita visum.* Ex Andocide de Mysteriis. This is what they called Ostracism.

♦ *De privis hominibus lata,* Cicero de Leg. lib. 3.

§ *Scitum est jussu in omnes.* Cicero *ibid.*

C H A P. XX.

*Of Laws favourable to the Liberty of the Subject
in a Republic.*

IT frequently happens in popular governments that accusations are carried on in public, and every man is allowed to accuse whomsoever he pleases. This rendered it necessary to establish proper laws, in order to protect the innocence of the subject. At Athens, if an accuser had not the fifth part of the votes on his side, he was obliged to pay a fine of a thousand drachms. Æschines, who accused Ctesiphon, was condemned to pay this fine *. At Rome, a false accuser was branded with infamy *, by marking the letter *K* on his forehead. Guards were likewise appointed to watch the accuser, in order to prevent his corrupting either the judges or the witnesses †.

I HAVE already taken notice of that Athenian and Roman law, by which the party accused was allowed to withdraw before judgment was pronounced.

C H A P. XXI.

*Of the Cruelty of Laws with regard to Debtors in
a Republic.*

GREAT is the superiority which one fellow-subject has already over another, by lending

* See *Philostatus*, book 1, *Lives of the Sophists*, life of Æschines. See likewise *Plutarch* and *Phocius*.

* By the Remmian law.

† *Plutarch*, in a treatise entitled, *How a person may reap advantage from his enemies*.

him money, which the latter borrows in order to spend, and, of course, has no longer in his possession. What must be the consequence if the laws of a republic make a farther addition to this servitude and subjection?

AT Athens and Rome * it was first permitted to sell such debtors as were insolvent. Solon redressed this abuse at Athens *; by ordaining, that no man's body should answer for his civil debts. But the decemvirs † did not reform the same custom at Rome; and though they had Solon's regulation before their eyes, yet they did not chuse to follow it. This is not the only passage of the law of the twelve tables, in which the decemvirs shew their design of checking the spirit of democracy.

THOSE cruel laws against debtors did several times throw the Roman republic into danger. A man all covered with wounds made his escape from his creditor's house, and appeared in the forum §. The people were moved with this spectacle, and other citizens whom their creditors durst no longer confine, broke loose from their dungeons. They had promises made them, which were all broke. The people upon this having withdrawn to the Sacred Mount, obtained not an abrogation of those laws, but a magistrate to defend them. Thus they quitted a state of anarchy, but were soon in danger of falling under tyranny. Manlius, to render himself popular, was going to set those citizens at li-

* A great many sold their children to pay their debts. *Plutarch, life of Solon.*

* Ibid.

† It appears from history that this custom was established among the Romans before the law of the twelve tables, *Livy, 1 dec. book 2.*

§ *Dionys. Halicarn. Rom. An. book 6.*

erty, who ¶ had been reduced to slavery by their cruel creditors. Manlius's designs were prevented, but without remedying the evil. Particular laws facilitated to debtors the means of paying ♦; and in the year of Rome 428 the consuls proposed a law *, which deprived creditors of the power of confining their debtors in their own houses †. An usurer, called *Papirius*, attempted to corrupt the chastity of a young man named *Publius*, whom he kept in chains. *Sextus*'s crime gave to Rome its political liberty; that of *Papirius* gave it also the civil.

SUCH was the state of this city, that new crimes confirmed the liberty, which those of a more ancient date had procured it. *Appius*'s attempt upon *Virginia* threw the people again into that horror against tyrants, with which the misfortune of *Lucretia* had first inspired them. Thirty-seven years after § the crime of the infamous *Papirius*, an action of the like criminal nature ¶ was the cause of the people's retiring to the *Janiculum* ♦, and of giving new vigour to the law made for the safety of debtors.

¶ *Plutarch*, life of *Furius Camillus*.

♦ See what follows in the 24th chapter of the Book of laws as relative to the use of money.

* One hundred and twenty years after the law of the twelve tables, *eo anno plebi Romana velut aliud initium libertatis factum est, quod necesse fuerunt*. *Livy*, lib. 8.

† *Bona debitoris, non corpus obnoxium esset*. *Ibid*.

§ The year of Rome 465.

¶ That of *Plantius*, who made an attempt upon the body of *Veturius*; *Valerius Maximus*, book 6, art. 9. These two events ought not to be confounded; they are neither the same persons, nor the same times.

♦ See a fragment of *Dionys. Halicarn.* in the extract of virtues and vices, *Livy's* epitome, book 2. and *Freinshemius*, book 2.

SINCE that time creditors were oftener persecuted by debtors for having violated the laws against usury, than the latter were sued for refusing to pay them.

CHAP. XXII.

Of things that strike at Liberty in Monarchies.

LIBERTY often has been weakened in monarchies by a thing of the least use in the world to the sovereign: this is the naming of commissioners to try a private person.

THE prince himself derives so very little advantage from those commissioners, that it is not worth while to change for their sake the common course of things. He is morally certain that he has more of the spirit of probity and justice than his commissioners, who think themselves sufficiently justified by his nomination and orders, by a vague interest of state, and even by their very apprehensions.

UPON the arraignment of a peer under Henry VIII. it was customary to try him by a committee of the house of lords: by which means he put to death as many peers as he chused.

CHAP. XXIII.

Of Spies in Monarchies.

SHOULD I be asked whether there is any necessity for spies in monarchies; my answer would be that the usual practice of good princes is not to employ them. When a man obeys the

laws, he has discharged his duty to his prince. He ought at least to have his own house for an asylum, and the rest of his conduct should be exempt from inquiry. The trade of a spy might perhaps be tolerable, were it practised by honest men; but the necessary infamy of the person is sufficient to make us judge of the infamy of the thing. A prince ought to act towards his subjects with candour, frankness, and confidence. He that has so much disquiet, suspicion, and fear, is an actor perplexed in playing his part. When he finds that the laws are generally observed and respected, he may judge himself safe. The behaviour of the public answers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how should they do otherwise than love him? since he is the source of almost every bounty and favour; punishments being generally charged to the account of the laws. He never shews himself to his people but with a serene countenance; they have even a share of his glory, and they are protected by his power. A proof of his being beloved is that his subjects have a confidence in him; what the minister refuses, they imagine the sovereign would have granted: even under public calamities they do not accuse his person; they are apt to complain of his being misinformed, or beset by corrupt men: *Did the prince but know*, say the people; these words are a kind of invocation, and a proof of the confidence they have in his person.

C H A P. XXIV.

Of Anonymous Letters.

THE Tartars are obliged to put their names to their arrows, that the arm may be known which shoots them. When Philip of Macedon was wounded at the siege of a certain town, these words were found on the javelin, *After has given this mortal wound to Philip* *. If they who accuse a person did it merely to serve the public, they would not carry their complaint to the prince, who may be easily prejudiced, but to the magistrates, who have rules that are formidable only to calumniators. But if they are not willing to leave the laws open between them and the accused, it is a presumption they have reason to be afraid of them; and the least punishment they ought to suffer, is not to be credited. No notice therefore should ever be taken of those letters, except in cases that admit not of the delays of the ordinary course of justice, and in which the prince's welfare is concerned. Then it may be imagined that the accuser has made an effort, which has untied his tongue. But in other cases one ought to say with the emperor Constantius, *We cannot suspect a person who has wanted an accuser, whilst he did not want an enemy* *.

* Plutarch's Morals, Comparison of some German and Greek histories, tom. 3. p. 487.

* Leg. VI. Cod. Theod. de Famis Libellis.

C H A P. XXV.

Of the manner of governing in Monarchies.

THE royal authority is a spring that ought to move with the greatest freedom and ease. The Chinese boast of one of their emperors, who governed, they say, like the heavens, that is, by his example.

THERE are some cases in which a prince should exert the full extent of his power; and others in which he should reduce it within narrower bounds. The sublimity of administration consists in knowing the proper degree of power which should be exerted on different occasions.

THE whole felicity of monarchies consists in the opinion which the subjects entertain of the lenity of the government. A weak minister is always ready to remind us of our slavery. But granting even that we are slaves, he should endeavour to conceal our misery from us. All he can say or write is that the prince is uneasy, that he is surprised, and that he will redress all grievances. There is a certain ease in commanding; the prince ought only to encourage, and let the laws menace ♦.

C H A P. XXVI.

That in a Monarchy the Prince ought to be of easy Access.

THE utility of this maxim will appear from the inconveniency attending the contrary

♦ Nerva, says Tacitus, increased the ease of government.

practice. *The Czar Peter I. says the Sieur Perry ¶, has published a new edict, by which he forbids any of his subjects to offer him a petition, till after having presented it to two of his officers. In case of a refusal of justice they may present him a third, but upon pain of death, if they are in the wrong. After this no one ever presumed to offer a petition to the Czar.*

C H A P. XXVII.

Of the Manners of a Monarch.

THE manners of a sovereign contribute as much as the laws themselves to liberty; like these he may transform men into brutes, and brutes into men. If he prefers free and generous spirits, he will have subjects: if he likes base dastardly souls, he will have slaves. Would he know the great art of governing, let him call honour and virtue to attend his person; and let him encourage personal merit. He may even sometimes cast an eye on talents and abilities. Let him not be afraid of those rivals who are called men of merit; he is their equal when once he loves them. Let him gain the hearts of his people, without subduing their spirits. Let him render himself popular; he ought to be pleased with the affections of the lowest of his subjects, for they too are men. The common people require so very little condescension, that it is fit they should be humoured; the vast distance between the prince and them will surely prevent them from giving him any uneasiness. Let him be exorable to supplication, and

¶ State of Russia, p 173. Paris edition, 1787.

resolute against demands; in short, let him be sensible that his people have his refusals, while courtiers enjoy his favours.

C H A P. XXVIII.

Of the Regard which Monarchs owe to their Subjects.

PRINCES ought to be extremely circumspect with regard to raillery. It pleases with moderation, because it is an introduction to familiarity; but a satyrical raillery is less excusable in them than in the meanest of their subjects, for it is they alone that give a mortal wound.

MUCH less should they offer a public affront to any of their subjects; kings were instituted to pardon and to punish, but never to insult.

WHEN they affront their subjects, their treatment is more cruel than that of the Turk or the Muscovite. The insults of these are a humiliation, not a disgrace; but both must follow from the insolent behaviour of sovereigns.

SUCH is the prejudice of the eastern nations, that they look upon an affront from the prince as the effect of paternal goodness; and such on the contrary is our way of thinking, that besides the cruel vexation of being affronted, we despair of ever being able to wipe off the disgrace.

PRINCES ought to rejoice in having subjects to whom honour is dearer than life, an incitement to fidelity as well as to courage.

THEY should remember the misfortunes that have happened to sovereigns for insulting their subjects, the revenge of *Charea*, of the eunuch *Narses*, of count *Julian*, and, in short, of the

duchefs of *Montpensier*, who being enraged against Henry III. for having published some of her private failings, tormented him during his whole life.

C H A P. XXIX.

Of the civil Laws proper for mixing some portion of Liberty in a despotic Government.

THOUGH despotic governments are of their own nature every where the same; yet from circumstances, from a religious opinion, from prejudice, from received examples, from a particular turn of mind, from manners or morals, it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments: thus in China the sovereign is considered as the father of the people; and at the commencement of the empire of the Arabs, the sovereign was their preacher ♦.

It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, and Vedam among the Indians, and the classic Books among the Chinese. The religious code supplies the civil, and fixes the extent of arbitrary sway.

It is not at all amiss that in dubious cases the judges should consult the ministers of religion †. Thus in Turkey the Cadis consult the Mollachs. But if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice, to the end that the civil and ec-

♦ The Caliphs.

† History of the Tartars, 3d part, p. 277. in the remarks.

clesiastic power may be tempered also by the political authority.

C H A P. XXX.

Continuation of the same Subject.

NOTHING but the very excess and rage of despotic power ordained that the father's disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the sovereign ought to leave suppliants or mediators between himself and the accused, to assuage his wrath, or to inform his justice.

IT is a very good custom of the Moldavians ♦, that when a lord is disgraced, he goes every day to pay his court to the king till he is taken again into favour: his presence disarms the prince's indignation.

IN some despotic governments ¶ they have a notion that it is trespassing against the respect due to their prince, to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

ARCADIUS and *Honorius*, by a law § which has been already spoken of *, positively declare that they will shew no favour to those who shall pre-

♦ See Francis Pirard.

¶ As at present in Persia, according to Sir John Chardin; this custom is very ancient. They put Cavades, says Procopius, into the castle of oblivion; there is a law which forbids any one to speak of those who are shut up, or even to mention their name,

§ The fifth law in the cod. *ad leg. Jul. Mag.*

* In the 8th chapter of this book,

sume to petition them in behalf of the guilty †. This was a very bad law indeed, since it is bad even under a despotic government.

THE custom of Persia, which allows every man that pleases to leave the kingdom, is excellent; and though the contrary practice derives its origin from despotic power, which has always considered the subjects as slaves †, and those who leave the country as fugitives, yet the Persian practice is useful even to a despotic government, because the apprehension of people's withdrawing for debt, restrains or moderates the oppressions of bashaws and extortioners.

† Frederic copied this law in the constitutions of Naples, book 1.

◆ In monarchies there is commonly a law which forbids those who are invested with public employments to go out of the kingdom, without the prince's leave. This law ought to be established likewise in republics. But in those that have particular institutions the prohibition ought to be general, in order to prevent the introduction of foreign manners.





B O O K XIII.

Of the Relation which the levying of Taxes and the Greatness of the public Revenues have to Liberty.

C H A P. I.

Of the public Revenues.

THE public revenues are a portion that every subject gives of his property, in order to secure, or enjoy the remainder.

To fix these revenues properly, regard should be had both to the necessities of the state and to those of the subject. The real wants of the people ought never to give way to the imaginary wants of the state.

IMAGINARY wants are those which flow from the passions, and the weakness of the governors, from the vain conceit of some extraordinary project, from the inordinate desire of glory, and from a certain impotence of mind incapable of withstanding the impulse of fancy. Ministers of a restless disposition have often imagined, that the wants of their own mean and ignoble souls were those of the state.

NOTHING requires more wisdom and prudence than the regulation of that portion of which the subject is deprived, and that which he is permitted to retain.

THE public revenues should not be measured by the people's abilities to give, but by what they ought to give; and if they are measured by their abilities to give, it should be considered what they are able to give continually.

C H A P. II.

That it is bad Reasoning to say that the Greatness of Taxes is good in its own Nature.

THERE have been instances in particular monarchies, of petty states, free from taxes, that have been as miserable as the circumjacent places which groaned under the weight of exactions. The chief reason of this is; that the state can hardly have any such thing as industry, arts, or manufactures, because of its being subject to a thousand restraints from the great state by which it is environed. The great state is blessed with industry, manufactures, and arts; and establishes laws by which those several advantages are procured. The petty state becomes therefore necessarily poor, let it pay never so few taxes.

AND yet some have concluded from the poverty of those petty states, that in order to render the people industrious, they should be loaded with taxes. But it would be a juster inference, that they ought to pay no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working; wretches, who, disheartened by labour, make their whole happiness consist in idleness.

THE effect of wealth in a country is to inspire every heart with ambition: that of poverty is to

give birth to despair. The former is excited by labour, the latter is soothed by indolence.

NATURE is just to all mankind, and repays them for their industry: she renders them industrious by annexing rewards in proportion to their labour. But if an arbitrary prince should attempt to deprive people of nature's bounty, they would fall into a disrelish of industry; and then indolence and inaction must be their sole delight.

CHAP. III.

Of Taxes in Countries where Part of the People are Villains or Bondmen.

THE state of bondage is sometimes established after a conquest. In that case, the bondman that tills the land ought to have a kind of partnership with his master. Nothing but a communication of loss or profit can reconcile those who are doomed to labour to such as are blessed with a state of affluence.

CHAP. IV.

Of a republic in the like Case.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, she ought never to suffer the free subject to have a power of increasing the tribute of the bondman. This was not allowed at Lacedæmon. Those brave people thought the Helots ♦ would be more industrious in cultivating their lands, and knowing that

their servitude was not to increase; they imagined likewise that the masters would be better citizens, when they desired no more than what they were accustomed to enjoy.

C H A P. V.

Of a Monarchy in the like Case.

WHEN the nobles of a monarchical state cause the lands to be cultivated for their own use by a vanquished people, they ought never to have a power of increasing the service or tribute ♦. Besides, it is right the sovereign should be satisfied with his own demesne, and the military service. But if he wants to raise taxes on the vassals of his nobility, the lords of the several districts ought to be answerable for the tax †, and be obliged to it for the vassals, by whom they may be afterwards reimbursed. If this rule be not followed, the lord and the collectors of the public taxes will alternately harass the poor vassal, till he perishes with misery, or flies into the woods.

C H A P. VI.

Of a despotic Government in the like Case.

THE foregoing rule is still more indispensably necessary in a despotic government. The lord who is every moment liable to be stripped of his lands and his vassals, is not so eager to preserve them.

♦ This is what induced Charlemagne to make his excellent institution upon this head. See the 5th book of the *Capitularies*, art. 303.

† This is the practice in Germany.

WHEN Peter I. thought proper to follow the custom of Germany, and to demand his taxes in money, he made a very prudent regulation, which is still followed in Russia. The gentleman levies the tax on the peasant, and pays it to the Czar. If the number of peasants diminishes, he pays all the same; if it augments he pays no more: so that it is his interest not to oppress his vassals.

CH A P. VII.

Of Taxes in Countries where Bondage is not established.

WHEN the inhabitants of a state are all free subjects, and each man enjoys his property with as much right as the prince his sovereignty, taxes may then be laid either on persons, on lands, on merchandizes, on two of these, or on all three together.

IN the taxing of persons, it would be an unjust proportion to conform exactly to that of property. At Athens * the people were divided into four classes. Those who drew five hundred measures of liquid or dry fruit from their estates, paid a † talent to the public; those who drew three hundred measures, paid half a talent; those who had two hundred measures, paid ten minæ; those of the fourth class paid nothing at all. The tax was fair, though it was not proportionable: if it did not follow the measure of people's property, it followed that of their wants. It was judged that every man had an equal share of what was *necessary for nature*; that whatsoever was *necessary for nature*,

* Pollux, book 8, chap. 19. art. 139.

† Or 60 minæ.

ought not to be taxed; that to this succeeded the useful, which ought to be taxed, but less than the superfluous; and that the largeness of the taxes on what was superfluous prevented superfluity.

IN the taxing of lands, it is customary to make lists or registers, in which are ranged the different classes of estates. But it is very difficult to know these differences, and still more so, to find people that are not interested in mistaking them. Here therefore are two kinds of injustice, that of the man and that of the thing. But if in general the tax be not exorbitant, and the people continue to have plenty of necessaries, these particular acts of injustice will do no harm. On the contrary, if the people are allowed to enjoy only just what is necessary for subsistence, the least disproportion will be of the greatest consequence.

IF some subjects do not pay enough, the mischief is not so great; their convenience and ease turn always to the public advantage: if some private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the ease and convenience of the latter will soon make its fortune rise. The whole depends upon a critical moment: shall the state begin with impoverishing the subjects to enrich itself? Or had it better wait to be enriched by its subjects? Is it more adviseable for it to have the former, or the latter advantage? Which shall it chuse; to begin, or to end with opulence?

THE duties on merchandize are felt least by the people, because they are not demanded of them in form. They may be so prudently managed, that the people themselves shall hardly know they pay

them. For this purpose it is of the utmost consequence, that the person who sells the merchandize should pay the duty. He is very sensible that he does not pay it for himself; and the consumer, who pays it in the main, confounds it with the price. It has been observed by some authors, that Nero had abolished the duty of the five and twentieth part arising from the sale of slaves *; and yet he had only ordained that it should be paid by the seller instead of the purchaser; this regulation, which left the impost intire, seemed nevertheless to suppress it.

THERE are two states in Europe where the taxes are very heavy upon liquors; in one the brewer alone pays the duty, in the other it is levied indiscriminately upon all the consumers: in the first nobody feels the rigour of the impost, in the second it is looked upon as a grievance. In the former the subject is sensible only of the liberty he has of not paying, in the latter he feels only the necessity that compels him to pay.

FARTHER, the obliging the consumers to pay, requires a continual rummaging and searching into their houses. Now nothing is more contrary than this to liberty; and those who establish these sorts of duties have not surely been so happy, as to hit upon the best method of collecting the revenue.

* *Vedigal. quinta & vicesima venarum mancipiorum remissum specie magis, quam vi, quia cum venditor pendere juberetur, in partem pretii emptoribus accrebat.* Tacit. An. lib. 13.

C H A P. VIII.

In what Manner the Deception is preserved.

IN order to make the purchaser confound the price of the commodity with the impost, there must be some proportion between the impost and the value of the commodity; for which reason there ought not to be an excessive duty upon merchandizes of little value. There are countries in which the duty exceeds seventeen or eighteen times the value of the commodity. In this case the sovereign removes the disguise: his subjects plainly see they are dealt with in an unreasonable manner; which renders them most exquisitely sensible of their servile condition.

BESIDES, the prince, to be able to levy a duty so disproportioned to the value of the commodity, must be himself the vender, and the people must not have it in their power to purchase it elsewhere: a practice subject to a thousand inconveniencies.

SMUGGLING being in this case very-lucrative, the natural and most reasonable penalty, namely, the confiscation of the merchandize, becomes incapable of putting a stop to it; especially as this very merchandize is intrinsically of an inconsiderable value. Recourse must therefore be had to extravagant punishments, such as those inflicted for capital crimes. All proportion then of penalties is at an end. Persons that cannot really be considered as vicious, are punished like the most infamous criminals; which of all things in the world is the most opposite to the spirit of a moderate government.

AGAIN, in proportion as people are tempted to

cheat the farmer of the revenues, the more the latter is enriched, and the former impoverished. To put a stop to smuggling, the farmer must be invested with extraordinary means of oppressing, and then the country is ruined.

CH A P. IX.

Of a bad kind of Impost.

WE shall here, by the way, take notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, an infinite deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets, in that case, the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated, that a duty on the paper on which the deeds are drawn would be of far greater service.

CH A P. X.

That the Greatness of Taxes depends on the Nature of the Government.

TAXES ought to be very light in despotic governments; otherwise who would trouble themselves with tilling the land? Besides, how is it possible to pay heavy duties in a government that makes no manner of return to the different contributions of the subject?

THE exorbitant power of the prince, and the extreme depression of the people, require that there

should not be even a possibility of the least mistake between them. The taxes ought to be so easy to collect, and so clearly settled, as to leave no opportunity for the collectors to augment or lessen them. A portion of the fruits of the earth, a capitation, a duty of so much per cent. on merchandizes, are the only taxes suitable to that government.

MERCHANTS in despotic countries ought to have a personal safeguard, to which all due respect should be paid. Without this they would be too weak to dispute with the custom-house officers.

C H A P. XI.

Of Confiscations.

THERE is one thing very particular with regard to confiscations, that, contrary to the general custom, they are more severe in Europe than in Asia. In Europe not only the merchandizes, but even sometimes the ships and carriages, are confiscated; which is never practised in Asia. This is because in Europe the merchant can have recourse to magistrates who are able to shelter him from oppression; in Asia the magistrates themselves would be the greatest oppressors. What remedy could a merchant have against a bashaw, who was determined to confiscate his goods?

THE prince therefore checks his own power, finding himself under a necessity of acting with some kind of lenity. In Turkey they raise only a single duty for the importation of goods, and afterwards the whole country is open to the merchant.

Smuggling is not attended with confiscation, or increase of duty. In China † they never examine the baggage of those who are not merchants. Defrauding the customs in the territory of the Mogul is not punished with confiscation, but with doubling the duty. The princes of * Tartary who reside in towns, impose scarce any duty at all on the goods that pass through their country. In Japan, it is true, to cheat the customs is a capital crime; but this is because they have particular reasons for prohibiting all communication with foreigners; hence the fraud † is rather a contravention of the laws made for the security of the government, than of those of commerce.

C H A P. XII.

Relation between the weight of Taxes and Liberty.

THAT taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery, is a general rule. This has always been and always will be the case. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every state where liberty gradually declines, till we come to Turkey. Swisserland seems to be an exception to this rule, because they pay no taxes; but

† Father du Halde, Tom. 2. p. 37.

* History of the Tartars, part. 3d. p. 290.

† Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpose, the Dutch for the commerce of Europe, and the Chinese for that of Asia; they confine the factors and sailors in a kind of prison, and lay such a restraint upon them as tires their patience.

the chief reason for that exemption is well known, and even confirms what I have advanced. In those barren mountains provisions are so dear, and the country is so populous, that a Swiss pays four times more to nature, than a Turk does to the Sultan.

A VICTORIOUS people, such as were formerly the Athenians and the Romans, may rid themselves of all taxes, as they reign over conquered nations. Then indeed they do not pay in proportion to their liberty, because in this respect they are no longer a people, but a monarch.

BUT the general rule still holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In despotic countries * there is an equivalent for liberty, which is the lightness of the taxes.

IN some monarchies in Europe, there are † particular provinces, which from the very nature of their civil government are in a more flourishing condition than the rest. It is pretended that these provinces are not sufficiently taxed, because through the goodness of their government they are able to be taxed higher: hence the ministers seem always to aim at depriving them of this very government, from whence a diffusive blessing is derived, which turns even to the advantage of the sovereign.

* In Russia the taxes are but small; they have been increased since the despotic power of the prince is exercised with more moderation. See the History of the Tartars, 2d part.

† The *Pais d'états*.

C H A P. XIII.

In what Government Taxes are capable of Increase.

TA X E S may be augmented in most republics, because the citizen, who thinks he is paying himself, chearfully submits to them, and moreover is generally able to bear their weight, from the nature of the government.

I N a monarchy taxes may be increased, because the moderation of the government is capable of procuring opulence: it is a recompence, as it were, granted to the prince for the respect he shews to the laws. In despotic governments they cannot be increased, because there can be no increase of the extremity of slavery.

C H A P. XIV.

That the Nature of the Taxes is relative to the Government.

A C A P I T A T I O N is more natural to slavery; a duty on merchandizes is more natural to liberty, as it has not so direct a relation to the person.

I T is natural in a despotic government for the sovereign not to give money to his soldiers, or to those belonging to his court; but to distribute lands amongst them, and of course, that there should be very few taxes. But if the prince gives money, the most natural tax he can raise is a capitation, which can never be considerable. For as it is impossible to make different classes of the contribu-

tors, because of the abuses that might arise from thence, considering the injustice and violence of the government, they are under an absolute necessity of regulating themselves by the rate of what even the poorest and most miserable are able to contribute.

THE natural tax of moderate governments is the duty laid on merchandizes. As this is really paid by the consumer, though advanced by the merchant, it is a loan which the latter has already made to the former. Hence the merchant must be considered on the one side as the general debtor of the state, and on the other as the creditor of every individual. He advances to the state the duty, which the consumer will some time or other refund; and he has paid for the consumer the duty which he has advanced for the merchandize. It is evident therefore, that in proportion to the moderation of the government, to the prevalence of the spirit of liberty, and to the security of private fortunes, a merchant has it in his power to advance money to the state, and to pay considerable duties for individuals. In England a merchant lends really to the government fifty or sixty pounds sterling for every tun of wine he imports. Where is the merchant that would dare do any such thing in a country like Turkey? And were he so presumptuous, how could he do it with a crazy or shattered fortune?

CHAP. XV.

Abuse of Liberty.

IT is owing to these great advantages of liberty that liberty itself has been abused. Because

a moderate government has been productive of admirable effects, this moderation has been laid aside: because great taxes have been raised, they wanted to carry them to excess: and ungrateful to the hand of liberty, of whom they received this present, they addressed themselves to slavery, who never grants the least favour.

LIBERTY produces excessive taxes; the effect of excessive taxes is slavery; and slavery produces a diminution of tribute.

MOST of the edicts of the eastern monarchs are to exempt every year some province of their empire from paying tribute*. The manifestations of their will are favours. But in Europe the edicts of princes are disagreeable even before they are seen, because they always make mention of their own wants, but not a word of ours.

FROM an unpardonable indolence in the ministers of those countries, owing to the nature of the government, and often to the climate, the people derive this advantage, that they are not incessantly plagued with new demands. The public expence does not increase, because the ministers do not form new projects; and if some by chance are formed, they are such as are soon executed. The governors of the state do not continually torment the people; for they do not continually torment themselves. But it is impossible there should be any fixed rules in our finances, since we always know that we shall have something or other to execute, without ever knowing what it is.

It is no longer customary with us to give the appellation of a great minister to a wise dispenser of the public revenues; but to a person of dexter-

* This is the practice of the Emperors of China.

city and cunning, who is clever at finding out what we call the ways and means.

C H A P. XVI.

Of the Conquests of the Mahometans.

IT was this excess of taxes † that was the occasion of the prodigious facility with which the Mahometans carried on their conquests. Instead of a continual series of extortions devised by the subtle avarice of the Greek emperors, the people were subjected to a simple tribute, which was paid and collected with ease. Thus they were far happier in obeying a barbarous nation, than a corrupt government, in which they suffered every inconvenience of lost liberty, with all the horror of present slavery.

C H A P. XVII.

Of the Augmentation of Troops.

A NEW distemper has spread itself over Europe, infecting our sovereigns, and inducing them to keep up an exorbitant number of troops. It has its redoublings, and necessarily becomes contagious. For as soon as one prince augments his forces, the rest of course do the same; so that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot, as if his people were in danger of being exterminated; and

† See in history the greatness, the oddity, and even the folly of those taxes. Anastasius invented a tax for breathing, *ut quisque pro haustu aeris penderet.*

they give the name of peace † to this general effort of all against all. Thus is Europe ruined to such a degree, that were private people to be in the same situation as the three most wealthy powers of this part of the universe, they would not have necessary subsistence. We are poor with the riches and commerce of the whole world; and soon, by thus augmenting our troops, we shall be all soldiers, and be reduced to the very same situation as the Tartars §.

GREAT princes, not content with hiring or buying troops of petty states, make it their business on all sides to pay subsidies for alliances, that is, generally to throw away their money.

THE consequence of such a situation is the perpetual augmentation of taxes; and the mischief which prevents all future remedy, is that they reckon no more upon their revenues, but in waging war engage their whole capital. It is no uncommon thing to see governments mortgage their funds even in time of peace, and to imploy what they call extraordinary means to ruin themselves; means so extraordinary indeed, that such are hardly thought on by the most extravagant young spend-thrift.

† True it is that this state of effort is the chief support of the balance, because it checks the great powers.

§ All that is wanting for this is, to improve the new invention of the militia established in most parts of Europe, and carry it to the same excess as they do the regular troops.

CHAP. XVIII.

Of an Exemption from Taxes.

THE maxim of the great eastern empires of exempting such provinces as have very much suffered from taxes, ought to be extended to monarchical states. There are some indeed where this practice is established; yet the country is more oppressed than if no such rule took place; because as the prince levies still neither more nor less, the state becomes bound for the whole. In order to ease a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow desperate between the necessity of paying, for fear of exactions; and the danger of paying, for fear of new burdens.

A WELL regulated government ought to set aside, for the first article of its expence, a determinate sum to answer contingent cases. It is with the public as with individuals, who are ruined when they live up exactly to their income.

WITH respect to an obligation for the whole amongst the inhabitants of the same village, some pretend, that it is but reasonable, because there is a possibility of a fraudulent combination on their side: but was it ever heard that upon mere supposition we are to establish a thing in itself unjust and ruinous to the state?

† See a treatise on the Roman Finances, chap. 2. Printed at Paris by Briasson, 1740.

C H A P. XIX.

Which is most suitable to the Prince and to the People, the farming the revenues, or managing them by commission?

THE managing of the revenues by commission is like the conduct of a good father of a family, who collects his own rents himself with economy and order.

By this management of the revenues the prince is at liberty to press or to retard the levy of the taxes, either according to his own wants, or to those of his people. By this he saves to the state the vast profits of the farmers, who impoverish it a thousand ways. By this he prevents the people from being mortified with the sight of sudden fortunes. By this the public money passes through few hands, goes directly to the treasury, and of course makes a quicker return to the people. By this the prince avoids an infinite number of bad laws extorted from him by the importunate avarice of the farmers, who pretend to offer a present advantage for regulations hurtful to posterity.

As the moneyed man is always the most powerful, the farmer renders himself arbitrary even over the prince himself; he is not the legislator, but he obliges the legislator to give laws.

I own that it is sometimes of use to farm out a new duty, for there is an art in preventing frauds, which motives of interest suggest to the farmers, but commissioners never think on: now the manner of levying it being once established by the farmer, it may afterwards be safely entrusted to a

commission. In England the management of the Excise and of the Post-office was borrowed from that of the farmers of the revenue.

In republics, the revenues of the state are commonly managed by commission. The contrary practice was a great defect in the Roman government*. In despotic governments, the people are infinitely happier where this management is established; Persia and China for instance †. The unhappiest of all are those where the prince farms out his sea-ports and trading cities. The history of monarchies abounds with mischiefs done by the farmers of the revenue.

NERO, incensed at the oppressive extortions of the publicans, formed a magnanimous but impracticable scheme of abolishing all sorts of taxes. He did not think of managing the revenues by commissioners: but he made four edicts; that the laws enacted against publicans, which had hitherto been kept secret, should be promulged; that they should exact no claims for above a year backward: that there should be a prætor established to determine their pretensions without any formality; and that the merchants should pay no duty for their vessels. These were the blessed days of that emperor.

* Cæsar was obliged to remove the publicans from the province of Asia and to establish there another kind of regulation, as we learn from Dio; and we are informed by Tacitus that Macedonia and Achaia, provinces left by Augustus to the people of Rome, and consequently governed pursuant to the ancient plan, obtained to be of the number of those which the emperor governed by his officers.

† See Sir John Chardin's travels through Persia. Tom. 6,

C H A P. XX.

Of the Farmers of the Revenues.

WHEN the lucrative profession of a farmer of the revenue becomes also a post of honour, the state is ruined. It may do well enough in despotic governments, where this employment is frequently exercised by the governors themselves. But it is by no means proper in a republic; since a custom of the like nature destroyed that of Rome. Nor is it better in monarchies; nothing being more contrary to the spirit of this government. All the other orders of the state are dissatisfied: honour loses its whole value; the gradual and natural means of distinction are no longer respected; and the very principle of the government is subverted.

It is true indeed that scandalous fortunes were raised in former times; but this was one of the misfortunes of the fifty years war. These riches were then considered as ridiculous; now we admire them.

EVERY profession has its particular lot. That of the tax-gatherers is wealth; and wealth is its own reward. Glory and honour fall to the share of that nobility, who are sensible of no other blessing. Respect and esteem are for those ministers and magistrates, whose whole life is a continued series of labour, and who make the welfare of the empire their sole delight.

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